

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76 1436

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
-against-

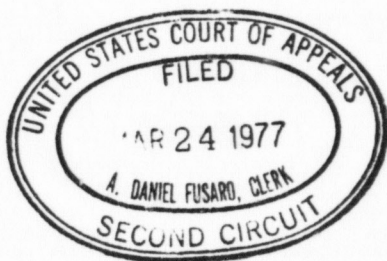
JERRY WINSTON, BROOME
COUNTY AVIATION, INC.,
COMMUTER AIRLINES, INC.,
and THEODORE (TED) BELL,

Defendants-Appellants.

ON APPEAL FROM THE JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

APPENDIX - VOLUME 2

Pages 277 to 544



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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 -----X
4 UNITED STATES OF AMERICA,

5 Plaintiff

6 -against-

7 JERRY WINSTON, BROOME COUNTY
8 AVIATION, INC., COMMUTER AIRLINES,
9 INC., and THEODORE (TED) BELL,

10 Defendants
11 -----X
12
13

14 CONTINUATION OF PROCEEDINGS in
15 above-entitled matter, came on before the United
16 States District Court, Northern District of New
17 York, at Auburn, New York, on June 3, 1976, at
18 10:00 a.m., before the Honorable Lloyd F. MacMahon,
19 United States District Judge.

20 VOLUME III
21
22
23
24
25

1 A P P E A R A N C E S:

2
3 The Honorable JAMES M. SULLIVAN, JR.,
4 United States Attorney, Northern District of New York,
5 Federal Building, Syracuse, New York, by ARTHUR A.
6 CHALENSKI, ESQ., Assistant United States Attorney,
7 Of Counsel.
8

9 - and -
10

11 BECKER, CARD, LEVY & RICHARDS, P.C.,
12 141 Washington Avenue, Endicott, New York 13760,
13 Attorneys for Defendants Jerry Winston, Broome
14 County Aviation, Inc., and Commuter Airlines, Inc.,
15 by RODNEY A. RICHARDS, ESQ., Of Counsel.
16

17 - and -

18 PAUL R. SHANAHAN, ESQ., Syracuse,
19 New York, Attorney for Defendant Theodore (Ted)
20 Bell.
21
22
23
24
25

1 (Whereupon, the following proceedings
2 took place before the Court, without the presence of
3 the Jury.)

4 THE COURT: Proceed.

5 MR. CHALENSKI: Your Honor, I subpoenaed
6 the custodian of the records of the Broome County
7 Aviation, Inc., to appear to testify and bring with
8 him the personnel records of all pilots and co-pilots
9 employed by them for the period of time since January
10 1, 1957 including records relating to dates of employment,
11 and reasons for termination.

12 I have been provided with these personnel
13 files and they do not include the dates when the
14 employees were fired, and any dates of termination,
15 and the position of the employees or whether he was
16 fired or quit, or laid off.

17 I would like to question the custodian,
18 and see if those records are available.

19 THE COURT: Is the custodian here?

20 MR. RICHARDS: Your Honor, the Defendant,
21 Ted Bell was the custodian of the records. The only
22 records we had available concerning these pilots are
23 those that were produced for the U.S. Government.

24 We are a small operation, and we do not
25 have a formalized procedure with a personnel department

1 to keep the records. In fact, what we did was complied
2 as we could locate on each of these pilots, and we put
3 them all in a file and produced them.

4 THE COURT: You do not have any records
5 of termination of an employee? I don't believe that.

6 MR. RICHARDS: Those are the records
7 that we have available regarding the employees. We
8 have a payroll.

9 THE COURT: What do you say are missing?

10 MR. CHALENSKI: The records that have
11 been produced do not show me when any employee was
12 fired. They do not show me his position and they do
13 not show me when he left.

14 THE COURT: I cannot believe that. You
15 have to carry social security, and income tax withholdings,
16 and you have to pay workmen's compensation, and all of
17 those things require these kinds of records. Where are
18 they?

19 MR. RICHARDS: We have payroll records,
20 Your Honor, which would give us evidence as to when they
21 were hired.

22 THE COURT: Are those records here?

23 MR. RICHARDS: They are not here, but
24 we can produce the payroll records.

25 THE COURT: Whatever records that you

1 have that pertain to these subjects.

2 I do not want to have to hold anybody
3 in contempt for failure to comply with a subpoena, but
4 these do not impress me as to the good faith compliance.

5 The issue here is when the persons were
6 fired, and why were they fired, and what do your records
7 show about it. It is plain that those are the issues
8 in these cases.

9 MR. RICHARDS: We are prepared to dispatch
10 a car to the airport to pick up all of the payroll
11 records which we have.

12 THE COURT: I think that we are entitled
13 to examine the custodian, and find out what records he
14 has got, and what records he ever had about these things.
15 Go ahead and call the custodian.

16 MR. CHALENSKI: I call the custodian of
17 the records of Broome County Aviation, and Commuter
18 Airlines, Inc.

19 THE COURT: Mr. Bell, I guess that is
20 you.

21 THEODORE (TED) BELL
22 Called as a witness, being first duly sworn, was
23 examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. CHALENSKI:

1 Q Do you appear as custodian of the records of Broome
2 County Aviation, Inc., and Commuter Airlines, Inc.?

3 A Yes, sir.

4 Q And have you produced documents before this Court
5 pursuant to a subpoena?

6 A Yes, sir, I did.

7 Q And do those documents, the ones that are on the left
8 of the Clerk's table, consisting of many folders, con-
9 tain information in manila folders?

10 A Yes, sir.

11 Q And do these documents contain the dates of hiring of
12 these employees since 1957, of these two corporations?

13 A Not since that date. I don't retain them that far back.

14 Q Do you have any -- do they contain the dates of hiring
15 of any employees of the corporation since 1967?

16 A Oh, yes. There is information there as to dates of
17 hiring, and dates of duty assignment.

18 Q Can you show me any of those folders that contain that
19 information?

20 A Yes, sir.

21 THE CLERK: Government's Exhibit thirty,
22 marked for identification.

23 (Document marked Government's Exhibit
24 number thirty for identification.)

25 BY MR. CHALENSKI:

1 Q I hand you Government's Exhibit thirty for identification,
2 and it is a folder of John Moreity, and can you tell me
3 from that folder when John Moreity was hired by the
4 corporation?

5 A March 12th, 1975.

6 Q How do you determine that?

7 A I determined that from the date. It was on an updated
8 application at the time of hiring.

9 Q And who put that date in there?

10 A John Moreity.

11 Q That is a date of application, and the date of application
12 also is the date of employment in all cases?

13 A Not in all cases, no.

14 Q Why is the date of employment there in this case?

15 A Because I recall the circumstances of hiring him.

16 Q Do you have any records which show the dates of employment
17 of the employees of Commuter Airlines, any other records
18 besides these folders?

19 A I don't, in my department, but there are payroll records
20 which show the date that they were entered on the payroll.

21 Q And what form are those payrolls in?

22 A They are bookkeeping type materials.

23 Q Ledgers?

24 A I am not sure.

25 Q Can they be produced before this Court?

1 A I would assume so, yes, sir.

2 Q Are they voluminous?

3 A I don't think they would be.

4 Q Do you have any records which show the position that the
5 employee was put in?

6 A Yes. The pilots' files indicate that information.

7 Q And are the pilot files before this Court?

8 A Those that are retained for the period in question are
9 there.

10 THE COURT: For the life of me, I cannot
11 understand why these steps weren't taken before the
12 Grand Jury and not interrupt a trial.

13 BY MR. CHALENSKI:

14 Q I hand you the file of John Moreity, and can you tell
15 me where it shows in there that he was hired as a pilot
16 by Broome County Aviation or Commuter Airlines?

17 A It doesn't show that because they file, the pilot file
18 material is not in this particular file.

19 Q You just said that the pilot file materials are before
20 this Court?

21 A I said that part were, sir. Not entirely before this
22 Court. Where they are retained, I have them. They
23 are here. I produced everything I had available.

24 Q Are there co-pilot files available?

25 A Yes, each person assigned as a pilot has a pilot file,

1 and that indicates his assignment and the date of that
2 assignment at the time he was an active employee.

3 Q And they are not before this Court?

4 A Those that I have are here.

5 THE COURT: When did you -- what -- well,
6 tell me what kind of files you keep, not when a man
7 comes in the employ of the company. What kind of a file
8 do you keep? Do you have an application?

9 THE WITNESS: Normally, he comes in and
10 fills out an application.

11 THE COURT: Tell me what the next step
12 is?

13 THE WITNESS: He is assigned -- no, he
14 is placed on the payroll by a form of a W-2 form, and
15 payroll information is gathered by the payroll depart-
16 ment.

17 THE COURT: What is your next step of
18 record keeping?

19 THE WITNESS: His pilot file is then
20 established, which has copies of his certificates,
21 documentation of any training, and flight checks, and
22 so forth that he receives during his initial qualifi-
23 cation with the Government.

24 THE COURT: And what about complaints
25 about the employee? Are those in that file?

1 THE WITNESS: That generally goes in his
2 personnel file that I keep, which is the original
3 application, and the original material.

4 THE COURT: What else is kept in that
5 file?

6 THE WITNESS: Any special forms for out-
7 side agencies that, or with whom we do business that
8 require special personnel information of a semi-confi-
9 dential nature.

10 THE COURT: Are there any performance
11 reports of any kind?

12 THE WITNESS: Not within the file, ordi-
13 narily.

14 THE COURT: Did you have these files with
15 respect to the employees named in this indictment, a
16 year ago?

17 THE WITNESS: Yes, I would say so.

18 THE COURT: When did you destroy them?

19 THE WITNESS: I did not destroy them.

20 THE COURT: Where are they?

21 THE WITNESS: They should be here.

22 THE COURT: Can you show them to us if
23 they are here?

24 THE WITNESS: Well --

25 THE COURT: Tell us specifically what

1 you want, and have you looked through these?

2 MR. CHALENSKI: Yes, I have, Your Honor.
3 These are what Mr. Bell is referring to as personnel
4 files, which would contain the complaints. They do not
5 appear to be the payroll records, and they do not appear
6 to have the pilot files or the co-pilot files.

7 Because of the opening remarks of the
8 Defense Counsel, I contend that I am entitled to the
9 records relating to all pilots of the Defendant, at
10 least within recent history, because he said at the
11 opening --

12 THE COURT: (Interrupting) What period
13 is covered by your subpoena?

14 MR. CHALENSKI: 1967. But the records
15 of even those pilots who were not named in these indict-
16 ments. He stated that these pilots were not treated
17 any differently from other pilots.

18 THE COURT: You asked for all records,
19 and you are entitled to what the subpoena calls for.
20 Go ahead.

21 BY MR. CHALENSKI:

22 Q Mr. Bell, which file do you have in your hand?

23 A Ivan Orr.

24 Q And you referred to a document contained in that file?

25 A The training qualifications.

1 THE COURT: This is a great place to
2 prepare a case when we are on trial.

3 BY MR. CHALENSKI:

4 Q And there are notations in there in both pen and red
5 ink?

6 A That is correct.

7 Q And is that your entire file showing date of initial
8 assignment for this man?

9 A That is what I have, yes, sir.

10 Q And that is what you have. Do you mean what you have
11 here, or is that all that exists?

12 A That is all that exists.

13 Q Is there anything or are there payroll records showing
14 that Mr. Orr was hired by the company?

15 A That is true.

16 Q Are there any records other than those before the Court
17 which show whether the pilots employed by the
18 corporations were employed as either Captains or
19 co-pilots?

20 A No.

21 Q That is not shown in the W-2 form?

22 A I can't say.

23 Q Is that shown on the payroll records?

24 A I can't say.

25 Q And did you review those to determine whether the

1 information is contained there?

2 A Did I review the payroll records?

3 Q Yes.

4 A No, sir.

5 Q The performance reports: does the pilot Orr before you
6 contain what is referred to as a performance report?

7 A No.

8 Q Is there a performance report relating to Mr. Orr in
9 existence, and in the custody of the corporation?

10 A No.

11 THE COURT: Has there ever been?

12 THE WITNESS: No.

13 BY MR. CHALENSKI:

14 Q Is there a pilot file relating to Mr. Orr?

15 A At the time of his resignation, this is what existed
16 of it. This was a short duration employee and it
17 was combined in his personnel file and put away in the
18 dead file area.

19 Q Following the preparation of these pilot files, and
20 performance reports, what additional papers are
21 prepared with relation to the employees of Commuter
22 Airlines and Broome County Aviation?

23 A Certifications as to their qualifications to fly for
24 our companies.

25 Q And are these placed in any of the files?

1 A They are normally placed in the pilot file. There are
2 two here.

3 Q Any additional papers?

4 A Copies of his certificates.

5 Q Are placed in the pilot file?

6 A Placed in the pilot file. Copies of examinations of his
7 proficiency are placed in the pilot file.

8 Q When an employee leaves the company, are any papers
9 prepared?

10 MR. SHANAHAN: What was that?

11 BY MR. CHALENSKI:

12 Q When an employee leaves the company, are any papers
13 prepared?

14 A Not normally, no.

15 Q Is any entry made on the payroll record showing that
16 he left?

17 A Yes.

18 Q And was entry made in any records of the corporation
19 showing whether he was fired, quit, or laid off?

20 A I believe they are, but I can't say for certain.

21 Q By 'I believe they are', what do you think?

22 A I think in terms of the unemployment request upon his
23 file, there is an entry there, and I believe that those
24 are retained, but I don't retain them myself, and I
25 don't know.

1 Q When you say yourself, does the corporation retain them?

2 A I believe they do. I don't know for sure. As far as
3 I know, they do.

4 Q And you were not served with the subpoena as Ted Bell,
5 but you were the custodian of the records so there would
6 be unemployment requests that would be prepared?

7 A Yes, there would.

8 Q For each pilot who is terminated for whatever the
9 reason?

10 A Yes.

11 Q And would those unemployment requests show the reason
12 for termination?

13 A These requests have the reason on them.

14 Q I request that you produce, before this Court tomorrow,
15 the unemployment requests, the payroll records, and
16 any pilot reports, and any pilot files, any co-pilot
17 files that are in your possession or any applications
18 contained in places other than the records which you
19 have produced, and which I have just requested you to
20 produce?

21 A All right, sir.

22 Q Can they be produced tomorrow?

23 A I would presume that they can.

24 MR. CHALENSKI: Thank you, Mr. Bell.

25 THE COURT: I direct you to produce them

1 tomorrow.

2 MR. RICHARDS: May I ask a question or
3 two of Mr. Bell?

4 THE COURT: Yes.

5 CROSS EXAMINATION

6 BY MR. RICHARDS:

7 Q Are all of the unemployment requests that are in the
8 files with Commuter through this period of time in those
9 folders that you produced here for the United States
10 Government?

11 A No, sir.

12 Q They are not?

13 A No, sir.

14 MR. RICHARDS: Thank you.

15 THE COURT: Produce all of the records
16 that you have. They were called for in that subpoena
17 and produce them tomorrow morning.

18 (Whereupon, the witness was excused.)

19 THE COURT: Bring in the Jury.

20 (Whereupon, the following proceedings
21 took place before the Court and the Jury.)

22 THE COURT: I would like to say to the
23 Jury that we have been working here on matters that
24 do not concern the Jury, and I am sorry that we were
25 late in starting.

ALEXANDER CALDER

Having been previously sworn, was further examined as follows:

CROSS EXAMINATION (Continued)

BY MR. SHANAHAN:

Q Mr. Calder, when we recessed last evening, I was talking to you about Exhibit twenty-four, the tape, if you recall, but for the moment I would like to leave that and go back to another matter, then come back to the tape.

Did I understand you correctly that you testified in direct examination, that your first contact with any of the people at Commuter Airlines was a telephone call that you received on September 26th of 1974?

A The first contact with me personally was on the 26th of September of 1974.

Q And following that, was the meeting a few days later, and on October 2nd at Binghamton that you have already told us about, would that be correct?

A The first in person meeting was on October 2nd, 1974.

Q So that on that occasion, for the first time, you were meeting the various people, the personnel who were employees of Commuter Airlines?

A Meeting them personally, face to face.

1 Q Yes, all right. And previous to that meeting, had there
2 been any contact by anyone other than Mr. Slough, who
3 is the man I think that you said contacted you on
4 September 26th?

5 A Yes.

6 Q And by whom were you contacted next after Mr. Slough?

7 A Before and after this, there were contacts, and I recall
8 one name and it was Delbert DeLaurentis.

9 Q Mr. DeLaurentis, according to your information, he was
10 either a pilot or a co-pilot for Commuter Airlines, and
11 would that be correct?

12 A Yes, sir.

13 Q And was that a telephone call, as well, and sometime
14 before the meeting of October 2nd?

15 A Yes, sir.

16 Q Now, apart from those two then, had you had any contact
17 with any other person connected with Commuter Airlines
18 before meeting them at the meeting of October 2nd?

19 A Yes, sir.

20 Q And what further contact?

21 A The phone contact that you inquired about, sir.

22 Q And apart from those two telephone contacts, from Mr.
23 Slough and Mr. DeLaurentis, were there any other contacts
24 previous to the meeting of October 2nd?

25 A Yes, numerous, sir.

1 Q Well, this is the period now between September 26th
2 and October 2nd?

3 A Yes, sir.

4 Q Would that be correct. Now, you told us about two
5 individuals, and who else?

6 A There are others. Those are the two that I can recall
7 for you.

8 Q You don't recall presently the names of any other people
9 who may have contacted you?

10 A That is correct, sir.

11 Q And would those contacts have been, in any event, by
12 telephone?

13 A Yes, sir, all contacts with me personally, prior to the
14 2nd of October, the meeting, face to face in the
15 Binghamton area, were by telephone.

16 MR. SHANAHAN: I see. May we have this
17 marked.

18 THE CLERK: Defendant's Exhibit F, marked
19 for identification.

20 (Document marked Defendant's Exhibit F,
21 for identification.)

22 BY MR. SHANAHAN:

23 Q Mr. Calder, I show you Defendant's Exhibit F for
24 identification, and ask you: do you recognize that
25 exhibit?

1 A I do, sir.

2 Q And does that exhibit bear your reproduced signature?
3 It is apparently a photostatic copy of the whole thing,
4 is that right?

5 A It does, and it is.

6 Q And is that a communication that you sent out on or
7 about the date that it bears, September 27th, 1974?

8 A That is correct, sir.

9 Q And I notice that at the top of that communication is
10 a list of names, and let me ask you: are those names
11 of people you were at least informed about at that time
12 that were employees of Commuter Airlines?

13 A That is correct, sir.

14 Q And would this exhibit, or copies of it, would those have
15 been sent out by mail by you to these various individuals
16 whose names are listed at the top?

17 A Yes, sir.

18 Q And were they sent out on or about September 27th of
19 1974?

20 A Yes, sir.

21 MR. SHANAHAN: Now, I would like to offer
22 this in evidence, if the Court please (Offering to Counsel).

23 MR. CHALENSKI: No objection, Your Honor.

24 THE CLERK: Defendant's Exhibit F, in
25 evidence.

1 (Defendant's Exhibit F, for identification
2 received in evidence.)

3 BY MR. SHANAHAN:

4 Q Mr. Calder, I just want to refer you to a portion of
5 this, the first paragraph that reads, 'a number of you
6 have contacted this organization with inquiries as to
7 how you should go about securing the protection and
8 progress of union representation in a contract with
9 your employer.'

10 Let me ask you: as of September 27th
11 of 1974, had a number of these various individuals
12 contacted you?

13 A Yes. You should keep in mind that on the letterhead,
14 it may not be complete.

15 Q I don't know exactly what that means, but I was under
16 the impression from what you said that you had received
17 a phone call from Mr. Slough on September 26th?

18 A I personally received it on the 26th or 27th, and I
19 testified earlier about Mr. DeLaurentis.

20 Q And this letter, Exhibit F, was sent out after your
21 phone call from Mr. Slough which was on the 26th, and
22 this was sent out the next day, correct?

23 A That is correct.

24 Q Well, had more than Mr. Slough contacted you between
25 the 26th and the 27th, then?

1 A Yes, sir, they had.

2 Q Do you know who?

3 A No, I am uncertain of that because I am not the only
4 member of my organization that receives calls in response
5 to people who want union representation.

6 Q Well, would this letter have been prepared by you in
7 the normal course of business?

8 A It was.

9 Q Of events?

10 A It was.

11 Q Now, with reference to the yellow cards, and I think that
12 we have one on exhibit here -- let me call to your
13 attention Defendant's Exhibit C for identification, and
14 I take it that that is a card that you are familiar with
15 (Offering)?

16 A It is.

17 Q And let me ask you, Mr. Calder: was such a card sent
18 out to each of the pilots and co-pilots with this letter
19 Exhibit F, that was dated September 27th?

20 A To those for whom we had home addresses, yes.

21 Q I see. And now at the meeting that you attended on
22 October 2nd, were cards similar to this --

23 A (Interrupting) I am sorry, would you repeat that,
24 please?

25 Q I am sorry. I was walking away from you and you may not

1 have been able to hear me.

2 At the meeting of October 2nd, Mr. Calder,
3 were cards similar to this distributed to those that
4 were in attendance?

5 A Yes.

6 Q And did various of the people who were present at the
7 meeting sign the cards?

8 A Yes.

9 Q Now, did you get any cards returned as a result of this
10 letter of September 27th?

11 A Yes.

12 Q And you have indicated to us that cards similar to this,
13 Exhibit C., were sent out with your letter, Exhibit F,
14 would that be true?

15 A With that Exhibit F, sir?

16 Q Well, the Exhibit F?

17 A I have already testified that the cards went out with this.

18 Q And the cards that are referred to in the letter are
19 cards similar to Exhibit C?

20 A Correct, sir.

21 Q Would that be right?

22 A Yes.

23 Q Now, I would like to go back to the subject of the tape,
24 Exhibit twenty-four. I think that we were on the subject
25 yesterday afternoon, Mr. Calder, of the inscription on

1 this tape. Am I correct in my understanding that all
2 of the printing on the tape is in your handwriting?

3 A That is correct, sir.

4 Q And that would include the date, Saturday, October 5,
5 '74?

6 A That is correct, sir.

7 Q And that would be true on the reverse side, as well?

8 A Yes, the handwritten printing is mine. The printed
9 printing is not mine.

10 Q You mean where it is C120, et cetera, that that is not
11 yours, of course?

12 A Right.

13 Q And presumably this Exhibit number, likewise, would not
14 be yours. All right, now, it is my understanding from
15 your testimony --

16 A (Interrupting) I am sorry, sir.

17 Q I did it again, and I apologize to you.

18 It is my understanding, from your testi-
19 mony, Mr. Calder, that Mr. Josephson turned this over
20 to you, would that be right?

21 A That is correct.

22 Q And was it your best recollection that it was turned
23 over to you about a week or a week and a half after?

24 A I cannot be more precise than that for you, sir.

25 Q But that would be your best recollection at this point,

1 would it?

2 A Yes.

3 Q Okay. And this tape, the one that has been marked as
4 Exhibit twenty-four here, is the same tape that he turned
5 over to you at that time?

6 A Yes, it is.

7 Q What I am getting at is: This is not a copy of another
8 tape that was turned over to you?

9 A That is correct, sir.

10 Q This is the original tape that you received from Mr.
11 Josephson?

12 A That is correct, sir.

13 Q All right. Now, you retained this, I think that you told
14 us, in your desk, or in your office in New York, is that
15 right?

16 A I testified to that.

17 Q And did you eventually turn it over to an agent of the
18 F.B.I.?

19 A Yes, I believe that that is a matter of record.

20 Q And did you turn it over to that agent on or about
21 April 2nd, 1976?

22 A I would rely on the date in your records, sir. I
23 delivered it to the F.B.I. in the F.B.I. office in New
24 York City.

25 Q I see. Well, just so that we can get this straight

1 THE CLERK: Defendant's Exhibit G, marked
2 for identification.

3 (Document marked Defendant's Exhibit G,
4 for identification.)

5 BY MR. SHANAHAN:

6 Q I show you Defendant's Exhibit G for identification,
7 which has been -- which is a document turned over to
8 us by the United States attorney, and would that refresh
9 your recollection as to the date when this tape was turned
10 over to someone connected with the Government (Offering)?

11 A I would rely upon that date. I am not sure, but I would
12 have to accept the date.

13 Q Well, let me point out to you that there is a date in
14 two places, one indicating the date that a Mr. Conrad
15 apparently dictated the report, and the date of the
16 report, itself, and both of those dates coincide as
17 April 2, 1976. Let me ask you this, and I am not trying
18 to press you as to the exact day, but would it have been
19 on or about that date?

20 A I am willing to accept the accuracy of the F.B.I.
21 report.

22 Q So that this Exhibit, then, was retained by you in your
23 desk for a period of approximately a year and a half?

24 A Correct, sir.

25 Q Now, during this interval, during the interval that you

1 had the possession of the tape, Mr. Calder, is it my
2 understanding that you utilized this tape on one or
3 more occasions for the purpose of recording some tele-
4 phone call that you had or telephone calls that you were
5 making?

6 A That is correct, sir.

7 Q And let me ask you first of all: do you recall when
8 it was that you utilized this same tape for such purposes?

9 A Again, I do not because I do not make records of the date.

10 Q Have you listened to what is recorded on the tape with
11 reference to the telephone conversations that you told
12 us about?

13 A Yes, sir.

14 Q And as a result of hearing whatever that conversation was,
15 does that enable you to fix an approximate time that this
16 tape was utilized for that purpose?

17 A It does.

18 Q And could you give us your best judgement then, from
19 that, as to when, or approximately when?

20 A One of the calls that I had made got a response, not
21 from the person that I was calling, but from his wife,
22 that he was out Christmas shopping. So I would guess
23 that it was prior to Christmas time.

24 Q Now, would that have been Christmas time of 1974, or
25 Christmas time of 1975?

1 A Christmas time of 1974. 1974, it would have to be, sir.

2 Q Your recollection would be that these calls would have
3 been made then, perhaps in December, or around Christmas
4 time of 1974?

5 A I can say with certainty it was 1974.

6 Q Now, in connection with your utilizing the tape for that
7 purpose, I assume that you must have some type of an
8 instrument in your office that is capable of recording
9 on this type of a tape, would that be so?

10 A That is correct, sir.

11 Q And are you acquainted with the type of tape that this
12 is, in this exhibit?

13 A I am not familiar with instruments of that type. By
14 that, do you refer to the cassette? I believe that that
15 is called a cassette?

16 Q Yes.

17 A Am I familiar with cassettes?

18 Q I beg your pardon.

19 A Is your question: am I familiar with cassettes?

20 Q Are you familiar with the type of tape that is contained
21 in this cassette, if I am express'n it correctly, and
22 I am not sure that I am.

23 A I would ask your guidance as to what do you mean by
24 tape? I am not familiar with these things in general,
25 these tapes.

1 Q Well, do you know, for instance, that the tape that is
2 contained in this cassette has two channels, I suppose
3 might be the proper way of expressing it?

4 A Well, all I know is that I had to flip the cassette over
5 to hear Mr. Bell, as opposed to Mr. Winston.

6 Q When you utilized this for the purpose of making telephone
7 calls, I assume that you inserted this cassette into some
8 type of an instrument that you had at your office, would
9 that be correct?

10 A That is obvious and correct.

11 Q And at the time that you had that it was for the purpose,
12 if I have understood your testimony correctly, of
13 recording whatever telephone conversations you had or
14 were going to have with whoever you were calling?

15 A That is correct.

16 Q And the people that you were calling were either pilots,
17 or co-pilots of Commuter Airlines, would that be right?

18 A That is correct, yes.

19 Q All right. Now, let me ask you: are you familiar enough
20 with the type of a tape to know that successive
21 recordings can be made on this type of a tape and that
22 in connection with a succeeding recording, the tape,
23 anything on the tape at that point is erased? Are
24 you acquainted with that phase?

25 A I am very well acquainted, and I took deliberate care

1 that I did not overlap or erase any portion of Mr. Bell
2 or Mr. Winston's testimony.

3 Q Now, and I think that you have already indicated to us
4 that this exhibit that we have here is not a re-recording
5 of another tape, but this is precisely in the condition
6 that you received it, other than those two telephone
7 calls that were added to it?

8 A I cannot give you a full answer to that. You must keep
9 in mind that that cassette has been in the hands of the
10 F.B.I. I believe that you would have to question them.
11 While it was in my care and custody, there was no change
12 and the tape was wholly constituted and untouched as
13 received by me from Mr. Josephson.

14 Q I see. Now, in connection with your use of this tape,
15 for the purpose of these telephone calls that you have
16 told us about, would you tell us just what you did first
17 of all to be sure that you weren't utilizing a part of
18 the tape that had already been used, and then, what you
19 did in connection with using it to record the telephone
20 conversation?

21 A In answer to part A of your question, I played the tape
22 until the conversation ran out on the side that I made
23 the recording of. I do not recall, at this point, whether
24 it was Mr. Winston or Mr. Bell. I took care that the
25 conversation had run out, and that the meeting had

1 broken up, as far as the tape there was concerned. I
2 let an interval go by, and then I prepared it for
3 reception of new material on the phone calls I was dialing.

4 Q And did preparing for the reception of the material on
5 the telephone call, would you explain to us just what you
6 did, physically, with the tape?

7 A Well, the tape was in the recorder, which is already a
8 player. I put it in the recording way, and attached the
9 device to the telephone, and then made my out-going
10 telephone calls.

11 Q I see. And were both of those calls, Mr. Calder, as best
12 you can now recall, made on the same day and in the same
13 time period?

14 A I believe so, sir.

15 Q That is, there wouldn't have been a situation where you
16 made the first call, or whoever it was, on one day, and
17 then several days elapsed before you utilized the tape
18 for the second call?

19 A My best recollection, sir, is that the calls were made
20 consecutively.

21 Q And within a comparatively short time of each other, the
22 same day and so on, would that be it?

23 A Yes, sir.

24 Q Mr. Calder, I would like to ask you, before I have these
25 various papers marked as an exhibit, if you would look

1 at them and select from them anything that was sent out
2 during the time period beginning, say, on or about
3 November 26th of 1974 and through the period when your
4 local was certified as the representative of the employees
5 of Commuter, and would you just look those over, please,
6 and lay aside all of them that may have been such
7 communications, and then I can have them separately
8 marked (Offering)?

9 A None, sir.

10 Q Well, now, these, I assume that you recognize have been
11 produced here by your office?

12 A By myself.

13 Q By yourself, all right. And you indicate to us that
14 none of these were sent out --

15 A (Interrupting) No, I didn't respond to that question.
16 I responded to your question whether any of these were
17 sent out after November 26th. None of them were sent
18 out after November 26th.

19 Q Well, would you tell us first of all: were any of
20 these documents sent out at all?

21 A They certainly were.

22 Q And when, Mr. Calder, were these sent out?

23 A During various stages of the campaign. I don't have
24 a log available for either myself or for you.

25 Q I am not asking really for a log, because I notice that

1 some of these are dated, and I presume that they were
2 sent out, if they were sent out at all, on or about the
3 dates that they bear, and would I be correct about that?

4 A That is a reasonable assumption.

5 Q Now, the campaign, as you call it, what were the general
6 dates as to when this campaign began, and when it
7 terminated, so that we can fix the time that these were
8 made available?

9 A The campaign, as far as I was personally concerned,
10 commenced on the 26th of September, 1974. They may
11 have a pre-date on that in conversations with the pilots
12 to some of my colleagues in the office, but the date
13 that I got on the situation was the 26th, and it ran
14 until the ballots were counted by the N.M.B., and I
15 believe it was on November 25th, around that date.

16 Q Around that date?

17 A Some campaign literature certainly goes out between
18 those dates.

19 Q Well, would it be correct, then, in assuming that these
20 various papers that you have just looked at were sent
21 out between September 26th, or perhaps a few days before
22 that, and this date of November 24th or November 25th,
23 the dates that the ballots were counted?

24 MR. CHALENSKI: I do object to continued
25 questioning along this line. It is far beyond the scope

1 of direct. I have no objection if the Defendant wants
2 to make Mr. Calder their witness at this time and proceed
3 accordingly to save him from having to come back with
4 his presentation.

5 MR. SHANAHAN: My purpose primarily was
6 to get these identified, and Mr. Calder is here now.

7 THE COURT: Let's make him your own
8 witness, and you can accomplish it that way.

9 MR. SHANAHAN: Would you read back the
10 last question?

11 (The previous question was read by the
12 Reporter.)

13 THE WITNESS: Yes.

14 THE CLERK: Defendant's Exhibit H ,
15 marked for identification.

16 (Document marked Defendant's Exhibit H
17 for identification.)

18 MR. SHANAHAN: I think that is all I have.

19 THE COURT: Redirect.

20 RE-DIRECT EXAMINATION

21 BY MR. CHALENSKI:

22 Q Mr. Calder, do you remember the date or the day of the
23 week that the meeting which you attended at the Holiday
24 Inn in Vestal with the employees of the Defendant was
25 held?

1 A I recall it was Wednesday, the 2nd of October, sir.

2 MR. CHALENSKI: I have no further questions
3 of Mr. Calder.

4 MR. RICHARDS: No questions.

5 MR. SHANAHAN: I have nothing further.

6 THE COURT: You are excused.

7 (Whereupon, the witness was excused.)

8 MR. CHALENSKI: The Government calls
9 Mr. Ronald Williams.

10 R O N A L D . B . W I L L I A M S

11 Called as a witness, being first duly sworn, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. CHALENSKI:

15 Q Where do you presently reside?

16 A Binghamton, New York.

17 Q And were you employed by Broome County Aviation on or
18 about October 3rd, through October 31, 1974?

19 A Yes, I was.

20 Q I show you Government's Exhibit number thirty-one for
21 identification, and have you seen that document before
22 (Offering)?

23 A Yes, I have.

24 Q And under what circumstances?

25 A It was a handout sheet by the company.

1 Q Do you --

2 A (Interrupting) It was to me, not individually, not just
3 as an individual, but everyone received one.

4 Q All employees?

5 A All employees received one.

6 Q And I show you Government's Exhibit number thirty-two
7 for identification, and is that a similar handout sheet
8 from the company for employees?

9 A A similar handout sheet. It is another meeting for all
10 of the employees. Oh, pilots.

11 Q Now, I hand you Government's Exhibit number twenty-four
12 for identification, and is that a tape cassette, and
13 have you ever seen that cassette before?

14 A Yes, I have.

15 Q And when did you first see it?

16 A It was the meeting of Captains and co-pilots on a
17 Saturday. I purchased it on, around noontime of that
18 day, and for the purpose of taping a meeting.

19 Q And did you tape that meeting that day?

20 A Yes, I did.

21 Q And that was Saturday, October 5th, 1974?

22 A Right.

23 Q And who attended that meeting?

24 A The meeting that I attended with the tape, all co-pilots
25 were present.

1 Q And who else?

2 A And Mr. Winston, and Mr. Bell.

3 Q And you say that you taped that meeting. On what did
4 you tape it?

5 A I taped it on a small cassette recorder, a tape recorder.

6 Q Your personal one?

7 A Yes, my personal recorder, yes.

8 Q And had you previously made tape recordings on that
9 recorder?

10 A Yes, I have.

11 Q And on your previous recordings, did it accurately re-
12 produce the recording that you made?

13 A Yes, it records.

14 Q Did you hear the entire portion of the meeting, which
15 is contained in that recording?

16 A Yes, I did.

17 Q And are there portions of the meeting which are not
18 contained in that recording?

19 A It is all there.

20 Q It is all there?

21 A You mean there is something not on the recording?

22 Q Yes.

23 A Well, due to the fact that the tape was started when
24 we entered the room, and there was a time lapse between
25 the actual starting of the tape until the meeting got

1 underway, there is a period in between there of nothing
2 of importance that is audible on the tape, but when the
3 meeting got started, I would say it was probably running
4 for about ten minutes, at least, or some reasonable
5 period, and it ran out of tape, and in other words, the
6 tape finished itself before the meeting had finished,
7 and then I had an opportunity to change the tape over
8 to take a portion of Mr. Bell's conversation.

9 Q And you were the one operating the tape recorder?

10 A Yes, I was the only one that had access to the tape
11 recorder.

12 Q Following that meeting, what did you do with that
13 cassette?

14 A I took it back down to the meeting place, and it was
15 the Pen-View Apartments.

16 MR. SHANAHAN: I didn't hear the answer.

17 (Whereupon, the previous answer was
18 read by the Reporter.)

19 THE WITNESS: Where the pilots were,
20 and I gave it to another co-pilot, Ira Josephson.

21 BY MR. CHALENSKI:

22 Q And during the time when you had that tape, after the
23 recordings were made on it, did you erase or record
24 over any portion of that tape?

25 A The tape was not touched in any way.

1 Q Have you recently listened to that tape recording?

2 A Yes, I have.

3 Q And is that tape recording an accurate reproduction of
4 what you heard at the meeting of October 5th, 1974?

5 A Yes, it is; the same tape.

6 MR. CHALENSKI: The Government offers
7 Exhibit twenty-four into evidence at this time.

8 MR. SHANAHAN: Before Your Honor rules
9 on that, we would like to ask some preliminary questions
10 in reference to it.

11 THE COURT: All right.

12 VOIR DIRE EXAMINATION

13 BY MR. SHANAHAN:

14 Q Mr. Williams, as I understand your testimony, the tape
15 that is contained in the cassette, Exhibit twenty-four,
16 was that the tape that you purchased yourself?

17 A Yes.

18 Q And so that it was a brand new tape?

19 A A brand new tape.

20 Q And do you recall when it was that you purchased it?

21 A The same day, approximately during the lunch hour. This
22 was anywhere between 12 and 1 o'clock.

23 Q And do you recall where you purchased it?

24 A It was purchased at one of two places. We went to two
25 places to find the tape, and that was the Binghamton

1 Plaza in Binghamton, and it was the Radio Shack or
2 Grand-Way.

3 Q And one of those two stores?

4 A One of the two stores.

5 Q And there was someone with you, I take it, from your
6 answer?

7 A Ira Josephson was with me.

8 Q Now, this meeting that you say is taped on this tape
9 in the cassette, the meeting was held October 5th, at
10 about what time of day?

11 A Oh, I think that we were supposed to be up there, it
12 was right after lunchtime, and 1:15 or 1:30 in that
13 area; soon after lunch.

14 Q And what type of a machine were you using with this
15 cassette? Was it your own machine?

16 A It was my own machine, yes.

17 Q And could you tell me --

18 A (Interrupting) I didn't bring it with me.

19 Q Could you tell us what it was?

20 A It was a cassette tape recorder.

21 Q Do you know the brand name or whatever it is that you
22 identify it by?

23 A It may be -- no, it is not. I was going to say Sony,
24 but I don't think it is a Sony. I can tell you what
25 it looks like, but I can't tell you the exact brand of

1 it.

2 Q But was it an instrument that you had owned for some
3 time previous to this date of October 5th, of 1974?

4 A I would say I have owned it since -- in the middle of
5 1960's.

6 Q Now, in connection with the operation of such a set,
7 this cassette would be inserted in the machine, itself,
8 is that correct?

9 A Yes.

10 Q And then, some levers are utilized in order to turn it
11 on, at some point?

12 A A play and a record button.

13 Q How big a machine is this, the one that you are using?

14 A It is probably about ten inches high and about six
15 inches wide, and --

16 Q (Interrupting) Is it contained in a brief case or
17 something of that sort?

18 A It has its own leather case around it.

19 Q It has a leather case around it?

20 A Yes.

21 Q And was it in such a leather case at the time that you
22 utilized it?

23 A It may have been, and it may not have been. I don't
24 know.

25 Q You don't recall?

1 A I usually keep it in a leather case.

2 Q Now, I don't want to get into a general examination
3 about this, because this is simply preliminary and I
4 may have some other questions after about it. But do
5 I understand that you turned this tape recorder on,
6 as you entered the area where the meeting was to be
7 held?

8 A I had a coat with me.

9 Q I beg your pardon?

10 A I had a coat with me.

11 Q A coat?

12 A An overcoat, and it was -- the tape recorder was on my
13 arm and the coat was over my arm.

14 Q You mean that you were concealing the recording device
15 with your overcoat, is that what you are telling us?

16 A I don't think that you could have seen it.

17 Q Well, was it your intention that it not be seen?

18 A By the other pilots, especially at the time, just because
19 nobody knew it was being taped.

20 Q I see, all right. And so that this was something that
21 you were doing entirely on your own, without discussing
22 it with any of the people present at the meeting?

23 A If only by chance that they may have known that I was
24 doing it.

25 Q All right. This meeting was held in what sort of a

1 room? Could you describe it to us, Mr. Williams?

2 A Well, it was a fairly large room. It was the main
3 office for the company. The size of it, oh, I don't
4 know but I would say it is at least, at least 40 feet
5 or 45 feet across, and maybe the same long; maybe 50
6 feet long.

7 Q And was that room set up for a meeting with a table
8 and chairs facing the table, as you would ordinarily
9 picture it?

10 A It is a typical --

11 Q (Interrupting) As you would ordinarily picture a
12 meeting room?

13 A Not a meeting room. It was the office, and you have
14 desks -- the girls' desks there and their chairs, and
15 typical desk and chair set up.

16 Q And there were about how many people present, would
17 you estimate?

18 A Well, all of the co-pilots, so I would say that there
19 must have been, oh, fourteen or sixteen. I don't
20 know how many were there. Maybe less than that.

21 Q And in addition, Mr. Winston and Mr. Bell?

22 A That is right.

23 Q And did you tell either Winston or Bell that you were
24 recording what they had to say?

25 A No, I did not.

1 Q Now, you indicated to Mr. Chalenski that you had this
2 thing turned on, and as a result there was about ten
3 minutes of recording before the meeting started?

4 A Right.

5 Q And then, I presume that you left it turned on as the
6 meeting began?

7 A It was never touched from the time it was turned on
8 until after Mr. Winston had stopped the meeting --
9 in other words, he had finished and then before Mr.
10 Bell had spoken, I changed the tape -- flipped it over
11 to the other side. By the time that was done, Mr. Bell
12 had already begun talking.

13 Q Well, in connection with this, was this cassette in a
14 position where you could view it as it was recording?

15 A Yes -- not -- well, I could view the area entirely that
16 it was in. I could not see the cassette, itself.

17 Q Well, would you or could you notice the container that
18 it was in, as you were recording it, and were you able
19 to see the cassette so that you could tell when it
20 reached the end of the side of a tape?

21 A No.

22 Q There did come a time when the tape had run out,
23 through its end, would that be right?

24 A Right.

25 Q And then I think that you said that when or after

1 Mr. Winston had completed whatever he had to say,
2 Mr. Bell spoke?

3 A Right.

4 Q And am I correct that you only got part of what Mr. Bell
5 said?

6 A Yes, I only -- well, I don't know how long the time was,
7 and I didn't time how much I received of Mr. Bell, but
8 there was a definite time period from where the tape
9 ran out, and Mr. Winston finished talking, to where I
10 was able to get up after Mr. Winston stopped and change
11 the tape over, and start it up again. By this time --
12 as a matter of fact, during the time I was not in front
13 of Mr. Bell as he talked. I was standing behind him.
14 I didn't have time to go back and sit down without
15 interrupting his talk.

16 Q When you were recording, how far distant were you from
17 say, Mr. Winston, as he was talking?

18 A Not too much farther than from me to you.

19 Q Would you estimate it to be perhaps fifteen feet, or
20 thereabouts?

21 A I would say twenty feet.

22 Q Twenty feet, all right. And this tape recorder was in
23 its case?

24 A Right.

25 Q And in some manner covered or under the overcoat that

1 you had?

2 A Just the recorder, and not the microphone.

3 Q Is there a recorder that extends out, or a microphone
4 that extends out from the recorder?

5 A Yes, it is on a cord.

6 Q And was the microphone, then, extended in some direction?

7 A Right.

8 Q From the recorder, itself?

9 A Yes.

10 Q And how far does thing extend, or how far was it
11 extended at that time?

12 A No more than a total of eighteen inches, maybe.

13 Q Eighteen inches. And where was it located? On the
14 floor or on the table or what?

15 A On the desk where the recorder was placed.

16 Q And was that also covered by something?

17 A No.

18 Q The microphone has a cord that connects it to the
19 recording device?

20 A Yes, it does.

21 Q So that while the recording device was under a coat,
22 or under some type of a garment, the cord and the
23 microphone was exposed?

24 A Right.

25 Q And on a desk or table?

1 A Right.

2 Q Now, what I am getting at: this tape ran out, and did
3 it run out in the course of Mr. Winston's talk, as he
4 was talking?

5 A I would say he was going over some points, and he got
6 to about point number three, and there may have been a
7 total of five points. I would say that we only missed --
8 well, I don't know how much we missed. It wasn't very
9 much. The tapes runs for an hour, and he didn't talk
10 that much longer.

11 Q Well, I see. If your tape had already extended ten
12 minutes before that --

13 A Right.

14 Q -- before the meeting started, you would have recorded
15 fifty minutes of the meeting?

16 A Fifty minutes of the meeting, right.

17 Q And you did not get, if I understand you, all of what
18 Mr. Winston said?

19 A Not the last, no.

20 Q And let me ask you: toward the end of his comments,
21 his talk or speech, or however you want to characterize
22 it, was he reading from some paper at that time?

23 A He used to have, when he had meetings, he had notes,
24 but I never really noticed him referring to it.

25 Q Do you have any recollection, from your observation,

1 as to whether he was reading from some paper, or papers
2 at the time that approached the end of his talk?

3 A I would say no. He might have read us a commentary
4 on something pertaining to -- pertaining to the problem,
5 or whatever you want to call it at hand. I don't know
6 what you want to say.

7 Q Do I correctly understand, then, in any event, that there
8 is a portion, the exact length of which you are not sure,
9 of Mr. Winston's remarks that you do not have on this
10 tape?

11 A There is a portion that he is --

12 Q (Interrupting) No, was there anything that alerted you
13 when the tape ran out?

14 A No.

15 Q When did you discover that the tape had run out?

16 A After Mr. Winston had finished talking.

17 Q I see. So that you were in no position to know, at
18 the moment the tape ran out, and then the conversation
19 went on, and you have no way of telling?

20 A Except by my watch.

21 Q I beg your pardon?

22 A Except by my watch, and that exact time I cannot
23 remember.

24 Q But there was nothing that you were able to see, either
25 in your recording device, or on the cassette, itself,

1 that would indicate that the tape had run out?

2 A No.

3 Q Now, when he did complete his remarks, you realized it
4 had previously run out?

5 A Right.

6 Q And now Mr. Bell is talking?

7 A Right. There was a fair amount of pause in between
8 Mr. Winston, you know, completing his conversation, and
9 then Mr. Bell taking his position, and a little bit of
10 talking around the office, and there was enough time
11 where I wouldn't have gotten up and moved through the
12 office point blankly toward the tape recorder unless
13 there was some pause there, and we may have even got a
14 cup of coffee before Mr. Bell started talking. It gave
15 me enough time to go over there and turn the tape over
16 without disrupting myself.

17 Q What I was getting at, rather than that, was that you
18 only have a part of what Mr. Bell said?

19 A Correct.

20 Q And having listened to it recently, as you have, you
21 had only recorded a very short statement of what Mr.
22 Bell did say?

23 A He made a very short statement.

24 Q Would you be able to tell us percentage wise how much
25 of it you got recorded? Are you able to do that?

1 A I would say that I missed no more than -- I am going
2 to say ten minutes, but I think that that is long. No
3 more than ten minutes.

4 Q Would you think that you had about half of what he said?

5 A At least half.

6 Q At least half?

7 A Right.

8 Q And so far as the portion of what Mr. Winston said, you
9 can't tell us apparently?

10 A I would say not much more. Just, and again this is an
11 estimate by watch, that it was no more than a maximum
12 of fifteen minutes.

13 MR. SHANAHAN: Could I have just a moment
14 Your Honor?

15 THE COURT: Surely.

16 BY MR. SHANAHAN:

17 Q Is that cassette a stereo tape?

18 A It is capable of taking a stereo tape. I took a mono
19 tape.

20 Q I beg your pardon?

21 A It is capable of taking stereo. I used the mono, meaning
22 singular voice recording.

23 Q For the benefit of us, including myself, who are
24 unfamiliar with this, would you explain so that the
25 jury can understand it, the stereo and the mono business

1 that you just mentioned?

2 A A tape recorder is capable of making, on this particular
3 tape machine, or not this machine, but on that tape, you
4 can put it into a machine that will print four tracks --
5 four distinct individual tracks on the tape, and my
6 machine -- well, how you get them is you tape it in one
7 direction, and put it through the tape machine and tape
8 it in one direction, and it will print on two tracks,
9 and then you flip it over and it lines up automatically
10 with the two blank areas, and it will tape in the
11 opposite direction on the other two tracks.

12 My machine will only tape mono, and that
13 means that you don't use two speakers, or two conversa-
14 tions, but you only get one, so therefore, the tape is
15 only on one track at a time. And you can only send it
16 through twice, one direction, and turn it over and send
17 it back through the other direction, and put two tracks
18 on it, instead of four.

19 Q I take it from that explanation, Mr. Williams, that you
20 were taping the particular conversation that we are
21 concerned with, that the recordings went on one side
22 of the tape?

23 A Mr. Winston is on one side, and Mr. Bell is on the
24 other.

25 Q Well, you have indicated that there are two -- what do

1 you call those, again?

2 A Well, there is nothing on a tape. When I say tracks,
3 that is a term used in audio tapes, and it is like grooves
4 on a record, but on a tape there are no grooves. There
5 is nothing for a tape recorder to follow.

6 THE COURT: Mr. Shanahan, I don't think
7 that we are getting much, and I think we are getting far
8 afield here.

9 MR. SHANAHAN: All right.

10 MR. RICHARDS: May I have a preliminary
11 question or two, Your Honor?

12 THE COURT: Certainly.

13 BY MR. RICHARDS.

14 Q Mr. Williams, have you previously tested this recording
15 device to determine if it would be capable of picking
16 up a speaker at that distance?

17 A I did not previously test the recorder to see whether
18 it could pick up someone at that distance.

19 Q I understand that the microphone was some twenty feet
20 from the speaker?

21 A I would say that the microphone was probably about --
22 no, no, I was twenty feet from the recorder, I. I
23 mean I was twenty feet from the speaker. The recorder
24 was approximately, again, no more than fifteen feet
25 from the speaker.

1 Q And the microphone that we are concerned about, as far
2 as picking up what was said, is that right?

3 A Yes.

4 Q And the microphone was how many feet from the speaker?

5 A Not much more than fifteen feet at the very most.

6 Q And as I understand your testimony you had not previously
7 tested this to see if a microphone from fifteen feet
8 away from the speaker could pick it up on your equipment?

9 A No.

10 MR. CHALENSKI: I have no further questions.

11 MR. SHANAHAN: May we have just a moment,
12 now, Your Honor?

13 THE COURT: Yes.

14 MR. SHANAHAN: Your Honor, with reference
15 to an objection here, which is the matter before the
16 Court at the moment: we have had an opportunity, of
17 course, to hear this previously. We are in this
18 position: we find that what is on the tape, we have
19 no quarrel with as to its accuracy.

20 However, as Your Honor has heard, the
21 comments that Mr. Winston made are not fully recorded,
22 his comments at that meeting are not completely
23 recorded nor are the comments of Mr. Bell. We only
24 have a portion, really, of each.

25 As a result of that situation, we have

1 no objection to the receipt in evidence of what we have
2 here. However, we would like it to be understood that
3 we raise no objection, with the understanding that we
4 can produce evidence to complete what is not here, when
5 we get to our side of the case.

6 THE COURT: Surely.

7 MR. SHANAHAN: We could perhaps explain
8 that in greater detail if we approach the bench.

9 THE COURT: I don't think that that is
10 necessary. We will take it for what it is: it is a
11 part recording, and you are free to introduce testimony
12 on anything else that you say that took place at that
13 meeting.

14 MR. SHANAHAN: Fine.

15 MR. CHALENSKI: I have no further
16 questions of the witness at this time. However, I
17 would like to recall him at a further time, later.

18 MR. SHANAHAN: Well, we are beyond that.

19 THE COURT: What did you say?

20 MR. CHALENSKI: I put this witness on
21 the stand at this time, only for the purpose of
22 authenticating the tape. I would like to call him
23 at a later time, and excuse him right now.

24 THE COURT: All right.

25 MR. SHANAHAN: I have some additional

1 questions that did not go directly to the foundation,
2 that I wanted to ask. I would have no objection to
3 waiting, if he is going to be brought back.

4 THE COURT: I take it that you are going
5 to bring him back?

6 MR. CHALENSKI: Yes, Your Honor.

7 THE COURT: All right, you are excused
8 for now.

9 (Whereupon, the witness was excused.)

10 MR. CHALENSKI: The Government calls
11 Speical Agent John LaVan to the stand.

12 THE CLERK: Exhibit twenty-four,
13 received in evidence.

14 (Government's Exhibit twenty-four for
15 identification, received in evidence.)

16 J O H N L E V A N

17 Called as a witness, being first duly sworn, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. CHALENSKI:

21 Q Mr. LeVan, I am handing you Government's Exhibit number
22 twenty-four in evidence, and it is a tape cassette,
23 and have you ever seen that cassette before?

24 A Yes, sir, I have.

25 Q And have you listened to the recordings contained on

1 that cassette?

2 A Yes, sir, I have.

3 Q And I hand you Government's Exhibit thirty-three for
4 identification, and it is a transcript of certain
5 recordings, and did you prepare that transcript?

6 A Yes, sir.

7 Q And is that transcript an accurate reproduction of
8 what you heard on the tape recording?

9 A Yes, sir, it is.

10 Q And that would be portions of what you heard on the
11 tape recording, would that be correct?

12 A Yes, sir.

13 Q And you d'd not record or transcribe the initial portions
14 of the meeting where no distinct person was speaking?

15 A Yes, that is right.

16 Q And you did not transcribe telephone conversations
17 which were contained on side two of the recording, is
18 that right?

19 A Yes, sir, that is correct.

20 MR. CHALENSKI: The Government offers
21 the transcript, Government's Exhibit thirty-three
22 for identification, in evidence (Offering to Counsel).

23 MR. RICHARDS: Your Honor, I object
24 to the admission of this transcript into evidence
25 on the ground that the tape is the best evidence.

1 This transcript is incomplete, and it does not fully
2 contain everything which appears on the tape. I have
3 had an opportunity to review it. For that reason, I
4 suggest that the tape should be used, and not the
5 transcript.

6 MR. CHALENSKI: The tape is difficult
7 to understand.

8 THE COURT: I am sure it is. But this
9 is not an accurate transcription of what is on the
10 tape, and the transcription is not admissible?

11 MR. CHALENSKI: It is an accurate
12 transcript of those portions of the tape that we
13 desire to play. We admit that we did not transcribe
14 the initial portions of the meeting with no distinct
15 person speaking, or the telephone conversations.

16 THE COURT: Is it an accurate transcription
17 of the part that the Government chooses to supply?

18 MR. RICHARDS: No, it is not, Your
19 Honor.

20 THE COURT: Well, I have no way of
21 resolving that, short of listening to it myself, in
22 the absence of the jury. I thought that this was
23 something that you would have taken care of in pre-trial
24 proceedings.

25 I guess the jury will have to take an

1 early lunch hour, and come back at two o'clock or
2 however long it takes.

3 (Whereupon, the Jury was excused.)

4 THE COURT: Where do you say it is
5 inaccurate, and how should it be corrected to make
6 it accurate?

7 Well, I think you should sit down with
8 Mr. Chalenski and work this out during the lunch hour.
9 If there are any difficulties, after you have done that,
10 I will hear you.

11 MR. RICHARDS: May I say one thing?

12 THE COURT: That is it.

13 THE CLERK: Court stands in recess
14 until two o'clock.

15 (Whereupon, the luncheon recess was
16 taken at 11:50 until 2:15 p.m. when the proceedings
17 were continued as follows.)

18 THE COURT: Good afternoon and you
19 may proceed.

20 MR. CHALENSKI: This transcript has
21 been offered into evidence.

22 THE COURT: I understand that you have
23 not yet narrowed down what your disputes are about
24 this?

25 MR. CHALENSKI: We and the Defense Counsel

1 have reviewed the transcript, and they have given me
2 all of the pages --

3 THE COURT: (Interrupting) All finished?

4 MR. CHALENSKI: Up to page twenty-five.
5 I have proved all but one or two of their changes.

6 THE COURT: Proceed to something else.
7 We will do that when do not have to keep the jury waiting
8 for these housekeeping details. It all should be
9 cleaned up and cleared out of the way before the trial.

10 Proceed to something else.

11 MR. CHALENSKI: I gave the Defense Counsel
12 a copy of the Government's transcript last week. I
13 submit that in the absence of any Defense Counsel having
14 proposed an alternate transcript, that the Government
15 transcript should be used.

16 THE COURT: I think last week was a little
17 late to give it to them, Mr. Chalenski, and you should
18 sit down with them and work this out. That is the way
19 lawyers do it.

20 I want you to work it out, but we are
21 not going to keep fourteen people waiting around while
22 you do this.

23 MR. CHALENSKI: Yes. We will call for
24 the next witness, and that will be Mr. Douglas A. Ton.

25 (Whereupon, the following took place

1 before the Court and the Jury.)

2 DOUGLAS A. TON

3 Called as a witness, being first duly sworn, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. CHALENSKI:

7 Q State your present address please and your occupation?

8 A Okay. Presently I am living with my parents, at
9 30 Bedford Center Road, in Bedford, and I am staying out
10 here at the hotel.

11 Q And what is your present occupation?

12 A Right now I am on leave for a wedding and then I am
13 planning to go back to school for the summer.

14 Q And you are employed by what organization?

15 A Commuter Airlines.

16 Q The defendant in this case?

17 A Yes.

18 Q And when were you employed by Commuter Airlines?

19 A In August of 1974.

20 Q And continuously thereafter, until the present?

21 A That is correct.

22 Q Do you recall a meeting of co-pilots on Saturday,
23 October 5th, 1974?

24 A I do.

25 Q Were you present at that meeting?

1 A Yes.

2 Q And have you previously taken the stand to listen to
3 Government's Exhibit number twenty-four, which is a
4 tape recording of that meeting?

5 A I have.

6 Q And do the conversations set forth on that tape
7 accurately represent or is that a substantially accurate
8 reproduction of what you heard the Defendants Winston
9 and Bell say during the course of that meeting?

10 A It is.

11 Q There are portions of that meeting which were not
12 recorded, is that correct?

13 A Yes.

14 Q And do you recall what the Defendant Winston said
15 during portions of the meeting, that were not recorded?

16 A I don't believe it was his -- all of his were recorded,
17 I believe. I think it is the first part of Mr. Bell's
18 comments that were not recorded.

19 MR. SHANAHAN: Would you read that
20 answer back.

21 (The previous question and answer was
22 read by the Reporter.)

23 BY MR. CHALENSKI:

24 Q Do you recall what Mr. Bell said during the first part
25 of his comments, that you did not hear recorded?

1 A No, I don't.

2 Q Were there any further meetings at which either the
3 Defendant Winston, or Bell spoke to the employee pilots
4 as a group?

5 A Yes, I believe one or two other meetings, again on
6 Saturdays.

7 Q With reference to the first meeting, that following
8 October 5th, 1974, do you recall that meeting?

9 A Basically, yes, and basically the same things were said.

10 Q Okay. Can you describe the tenor of that meeting?

11 MR. SHANAHAN: The what?

12 MR. CHALENSKI: The tenor of that meeting.

13 MR. SHANAHAN: I think that I will object
14 to the tenor of it. I don't know what that means.

15 THE COURT: I think that he is not
16 referring to his voice. Go ahead.

17 BY MR. CHALENSKI:

18 Q As related to the statements, those which you have heard
19 on the tape recording that you listened to, can you
20 describe the tenor of the subsequent meeting?

21 THE COURT: Sustained. Tell us what was
22 said by whom, as best you can remember it.

23 BY MR. CHALENSKI:

24 Q Mr. Ton, can you tell us what the Defendant Winston said
25 as best you can remember it?

1 A In the next meetings, they were saying that if the
2 internal instability continued as it was, that he would
3 have to pull in his horns, and possibly, you know, drop
4 some of his less profitable roots, and that was along
5 the idea.

6 Q Well, is that flat statement exactly what he said, as
7 best you can remember it?

8 A That is the way I can remember it. And again, kind of
9 going over again his comments that he made at the first
10 meeting.

11 Q Do you recall if he said anything else?

12 A No.

13 Q Did the Defendant Bell say anything at that meeting?

14 A I don't recall.

15 MR. SHANAHAN: Pardon me, but what was
16 his answer?

17 THE COURT: I don't recall.

18 BY MR. CHALENSKI:

19 Q You don't recall whether the Defendant Bell spoke at
20 that meeting?

21 A No.

22 Q Did there come a time when you had any private meetings
23 with the Defendant, Winston or Bell?

24 A Yes.

25 Q And when -- who was that with?

1 A Mr. Winston.

2 Q And when did that take place?

3 A On a charter to Newark Airport, and at the Newark Airport
4 we were down there for a period --

5 Q (Interrupting) What was the situation of that? Was
6 Mr. Winston a pilot of the plane?

7 A Yes.

8 Q And what did he say during the course of that conversation,
9 and what did you say?

10 A It was during that time that he said to me that he had
11 hoped that this, you know, union problem, or the insta-
12 bility that existed, could be straightened out and at
13 that time he asked in going along with some of the other
14 fellows if I wouldn't be willing -- he asked me my idea
15 of the union, and I said I wasn't particularly for it.
16 And he said, in that line, 'Would you be willing to show
17 your support to the Company by possibly turning over
18 your ballot?'

19 Q And did you say anything then?

20 A I said I would.

21 Q And did you turn your ballot over to him at that time?

22 A No, not at that time. I believe it was a day after, or
23 two days after.

24 Q And what happened at the time that you turned over your
25 ballot to him?

- 1 A Nothing.
- 2 Q Did you have any conversation with him at that time?
- 3 A No, sir.
- 4 Q Did you have any further conversation with the Defendant
- 5 Winston?
- 6 A Yes. On the occurrence of -- well, sometime shortly
- 7 after getting our second ballot.
- 8 Q And when did that -- about what date did that conversation
- 9 take place?
- 10 A I really can't recall.
- 11 Q And what did you say, and what did he say?
- 12 A He approached me and said -- asking continuing support
- 13 of the Company and, 'Would you be willing to again show
- 14 your support by giving me your ballot,' and I said, 'Yes'.
- 15 Q Following the election and the announcing of the results
- 16 of the election, that was during or about -- well, the
- 17 election results -- strike that. The ballots were
- 18 counted on November 25th, 1974, and do you recall that?
- 19 A Yes, I do.
- 20 Q And following that counting, do you know whether the
- 21 Defendant expanded its fleet of planes?
- 22 A Yes, I believe it has.
- 23 Q And can you describe how the Defendant expanded his
- 24 fleet of planes, and when it took place?
- 25 A Basically just recently. We have sold off some of the

1 smaller Navajos which are a six-passenger version of
2 an airplane and replaced it with a newer eight passenger
3 Navajo airplane.

4 Q And when did that take place?

5 A Say within the past three to four months.

6 Q And were you ever unavailable for flight duty?

7 A One time I did miss a flight. I called in --

8 Q (Interrupting) When did that take place?

9 A I don't recall. This was at least eight to nine months
10 ago. I called in early in an evening, and at that time
11 I was just on a flight in the afternoon. I missed the
12 morning flight, and they did get somebody to replace
13 me, and I just arrived at the airport late for that
14 flight.

15 Q And you were at the airport late for a flight?

16 A Yes.

17 Q Were you reprimanded for that?

18 A No.

19 Q Did the employer know that you were late?

20 A Yes.

21 Q Can you tell the jury what the word 'trading' or
22 'covering' means to you?

23 A Say again, please?

24 Q Can you tell the jury what the words 'trading' or
25 'covering' means to you with reference to Commuter

1 Airlines?

2 MR. RICHARDS: I object to the form
3 of the question.

4 THE COURT: Overruled.

5 THE WITNESS: Did you say 'training'?

6 BY MR. CHALENSKI:

7 Q No, 'trading' or 'covering'?

8 A Okay. Do you mean trading flights and making sure that
9 the schedule is covered?

10 Q Yes.

11 A Yes.

12 Q Can you tell the jury what that means?

13 A Okay. To trade a flight, say on a Saturday at that time
14 I was single, and I wanted to get to see my girlfriend
15 and I would ask another pilot who, at that time, was
16 available, and say, 'Would you be willing to trade,'
17 and say I had a Saturday morning flight, and if he said
18 yes, he would just put his name in and I would erase
19 mine and that way the flight would be covered, and we
20 would have traded our flights.

21 Q Would you advise either of the Defendants of that, in
22 advance?

23 A On a weekend, no.

24 MR. CHALENSKI: That is all of the
25 questions I have. Thank you.

CROSS EXAMINATION

BY MR. RICHARDS:

Q If I understand your testimony, you attended a joint meeting, or a meeting of the co-pilots on October 5th, at which Mr. Winston and Mr. Bell spoke, is that correct?

A That is correct.

Q And then subsequently, did you attend another meeting at which both of these gentlemen spoke, in which all of the co-pilots were together?

A As I said, I believe that there was one or two other meetings in that period of time.

Q Can you recall how long after that October 5th meeting you had another meeting with the other co-pilots?

A No, I can't.

Q Was it some time in October, if you can recall?

A Possibly the end. I don't recall.

Q But in any event, it is your recollection that what was said at these later meetings was substantially the same as what was said at the October 5th meeting?

A Correct.

Q Now, have you had an opportunity to listen to a tape of that October 5th meeting?

A Yes, I have.

Q And when did you last listen to that tape?

A A day ago, yesterday.

1 Q Yesterday. And if you can recall, did Mr. Winston,
2 at that meeting, indicate that if the union got in
3 he would cut back flights?

4 A During the tape, I believe that there was a mention of
5 that, that he couldn't expand and we may have to
6 restrict our operations.

7 Q Do you recall, at that meeting, as it has been refreshed
8 by listening to the tape, that Mr. Winston made the
9 comment that if the union got in he would cut back on
10 flights, and do you recall that statement?

11 A That particular statement, no, sir.

12 Q And do you recall him saying at that meeting that if the
13 union got in, he would padlock the door and retire and
14 close the business?

15 A That was not at that meeting, no.

16 Q Did you hear him say further at that meeting that if,
17 in the event that the union got in, he would stop buying
18 larger airplanes?

19 A No, not that specific comment.

20 Q All right. Now, I gather then that you had two private
21 conversations with Mr. Winston, is that correct?

22 A That is correct.

23 Q And the first conversation that you had with him you
24 were acting in the capacity of a co-pilot, and he was
25 a pilot on the flight to Newark, is that correct?

1 A That is correct.

2 Q And can you recall how long this conversation with Mr.
3 Winston lasted?

4 A Probably a good hour in length.

5 Q And throughout the course of this conversation, did you
6 discuss union matters?

7 A Yes.

8 Q And you have earlier testified that Mr. Winston indicated
9 to you that he wanted to know your support of the Company
10 by turning in your ballot to him, is that correct?

11 A Yes.

12 Q And did he say anything further in that regard about the
13 ballot?

14 A No.

15 Q Did he make any further comments about the union, that
16 you can recall?

17 A Just that at that time, apparently he had talked with a
18 friend of his that had a construction company, I believe,
19 and the union was killing the company, and was tearing
20 it apart.

21 Q Now, incidently, Mr. Ton, after you turned over your
22 ballot to Mr. Winston, you then submitted to the
23 National Mediation Board a request for another ballot,
24 is that right?

25 A Yes.

1 Q And do I understand from your testimony that you then
2 turned the second ballot over to Mr. Winston?

3 A Yes.

4 Q Did you, following your turn over of that ballot, did
5 you subsequently request still a third ballot?

6 A No, sir.

7 Q And so it is your testimony that you didn't vote at
8 the election?

9 A That is correct.

10 Q Now, you also testified that there was one occasion in
11 which you were late in arriving for a flight, is that
12 correct?

13 A Yes.

14 Q And I believe your testimony was that the Company knew
15 about this, is that correct?

16 A Well, of course, they did. They had to get another
17 pilot to cover.

18 Q Could you identify -- did anyone speak to you regarding
19 the late flight?

20 A As I said, no.

21 MR. RICHARDS: I have no further
22 questions.

23 BY MR. SHANAHAN:

24 Q I have just a couple. Mr. Ton, did I understand
25 correctly that you heard this tape just today?

1 A Just yesterday, sir.

2 Q I beg your pardon?

3 A Yesterday, I said.

4 Q And had you had any opportunity to listen to it before
5 today?

6 A No, sir.

7 Q So that in comparing what was on the tape with your
8 recollection of that meeting, this is the first
9 opportunity that you have had to do that?

10 A Yes, sir.

11 Q Would that be so. And as, of course, we have now
12 substantially a year and a half or perhaps more than
13 that that has passed since that meeting, would that be
14 right?

15 A Yes.

16 Q And I don't suppose that you kept any notes during the
17 meeting as to what statements were made by either Mr.
18 Winston or Mr. Bell?

19 A No, sir, I did not.

20 Q So that what you have given us is your best judgement
21 from listening to the tape today, that it is the same
22 as what was said at the meeting some time back?

23 A That I listened to yesterday, and that is correct, yes.

24 Q I see. Now, I understood you to say that it was your
25 impression that everything that Mr. Winston said is not

1 on the tape?

2 A Yes.

3 Q Would you have any judgement as to how much of what
4 Mr. Bell said is on the tape, percentage wise or in
5 any way you might be able to express it?

6 A Honestly, no, I don't.

7 Q Do you have a recollection as to how long Mr. Bell spoke
8 at that meeting?

9 A Time wise, no, sir.

10 Q Or could you tell us the duration of the recorded part
11 of what he said that you have heard on the tape, as you
12 listened to it recently?

13 A How many minutes?

14 Q Yes.

15 A No, sir, I can't.

16 Q Now, you spoke of a couple of other meetings?

17 A Correct.

18 Q And you weren't able to recall the dates of those, as
19 I remember it. The second meeting that I think that you
20 told Mr. Chalenski about in a little detail, did Mr.
21 Bell speak at that or not?

22 A Again, I say I don't recall.

23 Q You don't recall?

24 A No.

25 Q And then was there a third meeting?

1 A As I said, I believe that there was one or two other
2 meetings besides that first one, sir.

3 Q And you are not sure whether there was one or two, would
4 that be it?

5 A Right.

6 Q And do you have any recollection of Mr. Bell speaking
7 at any meeting, except the first one?

8 A No, sir.

9 Q And in connection with that first meeting, and the
10 meeting that you listened to on the tape about, do you
11 have any recollection, as you are here today, Mr. Ton,
12 that in the course of Mr. Winston's remarks, that he
13 was reading from a statement?

14 A Yes, he was. He said during that meeting that the same
15 problem had come up four years ago, and he had prepared
16 a statement to the pilots who were present at that time,
17 and he would like to read it to us again

18 Q And thereafter, following that portion of his remarks,
19 did he read from some paper, or did he apparently read
20 from some paper that he held before him, from that point
21 on?

22 A Yes.

23 Q And did that reading continue, as you would recall it,
24 to the end of his remarks?

25 A There were a few closing comments by him, but yes, that

1 was the end of his talk.

2 Q I wouldn't suppose that you would recall anything about
3 the number of pages that he read from?

4 A No, sir.

5 Q Anything of that sort?

6 A No, sir, I would not.

7 MR. SHANAHAN: I think that that is all.

8 Thank you.

9 RE-DIRECT EXAMINATION

10 BY MR. CHALENSKI:

11 Q On Cross examination, you were asked whether Mr. Winston
12 made a statement that he would padlock the doors and
13 retire and close the doors, during the meeting of
14 October 5th, 1974, and you stated no to that. Did you
15 ever head him make that statement?

16 A Yes, that statement was made -- I can't say about pad-
17 locking and closing the business but that he would
18 have to -- that he had the right to padlock the doors
19 because it was his business, and he would be able to
20 do this.

21 Q Can you tell when that statement took place?

22 A This was, again, I believe at the second meeting. I
23 was trying to determine when that was. There were
24 other men present. It was at that meeting where he
25 stated that if this instability continued that he would

1 have to pull in our horns, and he said at that time,
2 possibly drop some of our less profitable routes, and
3 the fact that he didn't have to, in a way, stand for
4 this, that he could close the operation, and I think it
5 was that he had had enough of it, too. He didn't want
6 to -- it was being rough on him.

7 Q And how did that relate to the union organizational
8 efforts?

9 MR. RICHARDS: I will object.

10 MR. SHANAHAN: I object.

11 THE COURT: Overruled.

12 BY MR. CHALENSKI:

13 Q Please answer the question.

14 A Okay. I don't think it changed anything, really. I
15 mean it made us all think about everything more and more
16 as the days went on. It was a pretty rough period.

17 MR. RICHARDS: I am going to object as
18 not responsive to the question.

19 THE COURT: Strike it.

20 BY MR. CHALENSKI:

21 Q When he made these statements, did he state what would
22 cause him to pull back his horns, that if this continued
23 he had enough, and what was he talking about?

24 A The union.

25 Q Did you vote in the union election?

1 A No, sir, I did not.

2 Q You did not vote?

3 A No, sir.

4 Q You turned in both your ballots to Mr. Winston?

5 A That is correct.

6 Q And you did not get a third ballot?

7 A No, sir.

8 MR. CHALENSKI: I offer Government's
9 Exhibit number thirty-one and thirty-two in evidence.
10 They were identified by Mr. Williams.

11 MR. RICHARDS: No objection, Your Honor.

12 THE CLERK: Government's thirty-one
13 and thirty-two for identification, received in evidence.

14 (Government's Exhibits thirty-one and
15 thirty-two for identification, received in evidence.)

16 MR. CHALENSKI: May I read Exhibit number
17 thirty-one, Your Honor?

18 THE COURT: Yes.

19 MR. CHALENSKI: Ladies and Gentlemen,
20 this is a short letter or correspondence dated October
21 3, and to the co-pilots concerning a meeting, to all
22 crew members from Mr. Winston.

23 'There will be a meeting on Saturday,
24 October 5th, at one o'clock p.m., for all captains
25 at the Commuter office. There will also be a meeting

1 for all co-pilots the same day, Saturday, October 5th
2 at 3:30 p.m.'

3 BY MR. CHALENSKI:

4 Q Mr. Ton, do you recall that there were two meetings
5 on Saturday, October 5th, 1974?

6 A Yes.

7 Q Did you attend both of those meetings?

8 A No, sir, I did not. I was at the co-pilots', and
9 attended the co-pilots meeting.

10 Q Only that one?

11 A Yes.

12 Q And you did not hear anything that was said at the
13 captains' meeting?

14 A Second hand, but generally I did not hear, personally,
15 no, sir.

16 MR. CHALENSKI: Thank you, Mr. Ton.

17 MR. RICHARDS: I have no further
18 questions.

19 MR. SHANAHAN: Nothing.

20 THE COURT: You are excused.

21 (Whereupon, the witness was excused.)

22 MR. CHALENSKI: The Government calls
23 Mr. Paul Sholl.

24 P A U L S H O L L

25 Called as a witness, being first duly sworn, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. CHALENSKI:

4 Q Mr. Sholl, where do you reside?

5 A I reside in Clifton Park, New York.

6 Q And what is your occupation?

7 A I am a pilot.

8 Q And how long have you been a pilot?

9 A About five years.

10 Q Were you employed by the Defendant, Broome County
11 Aviation, and Commuter Airlines, Inc.?

12 A Yes, sir.

13 Q And what was your date of employment?

14 A I was hired either the last week in February or the
15 first week of March of 1974, and terminated employment
16 on the 6th of December, 1974.

17 MR. SHANAHAN: Pardon me, but would you
18 keep your voice up. We are having difficulty hearing
19 you.

20 BY MR. CHALENSKI:

21 Q You terminated December 6th, 1974?

22 A That is correct.

23 Q Were you present at any organizational meetings of the
24 employees of the company after October 2nd, 1974?

25 A Yes, I was.

1 Q And where did that meeting take place ?

2 A It took place in the office at Broome County Airport,
3 there; Commuter Airlines.

4 Q I am talking, this time, Mr. Sholl, about organizational
5 meetings?

6 A Oh, yes. I attended a union meeting at the Holiday Inn
7 in Vestal, New York, on October 2nd, 1974.

8 Q And I am talking about after that date?

9 A I attended other meetings after that date. There were
10 union meetings along with the pilots, and also manage-
11 ment and pilot meetings.

12 Q Now, the question I am talking about right now is the
13 union meetings after October 2nd, 1974. When was the
14 first union meeting that you attended after October 2nd,
15 1974?

16 A I believe it was the following week.

17 Q Where did that meeting take place?

18 A That took place in the social room of the apartments
19 that I was living in at the time.

20 Q And do you know who arranged for that room?

21 A Yes, I did, and one other fellow, Dennis Larimore.

22 Q And did you know who was present at that meeting?

23 A Not everybody, no, I don't. I can think of several
24 names right off hand besides Dennis and Paul Briggs,
25 and John Herrington, and Ron Williams, Ira Josephson,

1 and Bob Slough, and I don't recall after that who else
2 was there.

3 Q Alex Calder?

4 A Alex Calder was there.

5 Q And did he address the employees who were present?

6 A Yes.

7 MR. SHANAHAN: Could we get that last
8 answer?

9 (The last answer was read by the
10 Reporter.)

11 BY MR. CHALENSKI:

12 Q Did you speak to Alex Calder during the course of that
13 meeting?

14 A I am sure that I did, yes.

15 Q And was anybody else in close proximity to you when you
16 spoke to Alex Calder?

17 A Yes, I would say the closest at that meeting -- well,
18 all of us either spoke at the meeting or after the
19 meeting ended, and I talked for a couple of minutes --
20 well, he thanked me --

21 Q (Interrupting) I want to know who was close to you?

22 A John Herrington was.

23 Q Anybody else close to you?

24 A I don't recall.

25 Q Can you tell the jury how far Alex was from you and how

1 far John Herrington was to both of you?

2 A I would say that Alex and I were maybe five feet apart,
3 and John Herrington was right next to Alex Calder.

4 Q And did Alex Calder say anything to you at that time?

5 A Yes, just that he thanked me for arranging for the
6 social room for our meeting, and that was about it.

7 Q And can you describe what level of voice he used?

8 A Well, it was audible. If I could hear him from five
9 feet away, I had no problem.

10 Q He didn't, if you recall, hush his voice?

11 A No, no.

12 Q Did you listen to the tape recording, Government's
13 Exhibit twenty-four, of a meeting of the pilots and
14 co-pilots on October 5th, 1974?

15 A Yes, I have.

16 Q And that meeting was the co-pilots', is that correct?

17 A Yes.

18 Q And was that tape a substantially accurate reproduction
19 of what you heard at that meeting?

20 A It is.

21 Q Did you have any individual meetings with either the
22 Defendant Winston, or Defendant Bell?

23 A Yes, I did. I had an individual meeting with Mr. Winston.

24 Q When did that take place?

25 A I believe it was around October 24th.

1 Q And can you tell the jury what he said, and what you
2 said during the course of that meeting?

3 A Well, Mr. Winston again reiterated the benefits of the
4 Company versus the union, and also told me if the union
5 was voted in that he would either be closing the doors
6 and going to Florida, or else would cut back just to the
7 Washington-Binghamton route, which is the only profitable
8 route, according to him, and cut back to just a couple
9 of flight crews. Also, I was told that there would
10 always be a job for those who were faithful to the
11 Company. Also, come to think about it, he mentioned
12 the fact that a couple of the pilots had already offered
13 to give him their ballots as a showing of faith to the
14 Company, and he asked me how I felt about that. At that
15 time, I told him that I had received my ballot in the
16 mail that day, which I did, and that I had already sent
17 it in.

18 Q And did he ask you how you voted?

19 A Yes, he did, and I told him that I left it blank, which
20 was a no-vote -- the same as a no-vote.

21 Q Did there come a time when you left the employ of the
22 Defendant?

23 A Yes.

24 Q And when did that take place?

25 A That took place on the 9th of December, 1974.

1 Q And under what circumstances did you leave the employ?

2 A I was terminated.

3 Q And under what circumstances -- did they state the reasons
4 to you?

5 A The reason that was given was that I was unsafe around
6 the aircraft, and also that was when we were overstaffed
7 with pilots and that there would be additional cut backs
8 following myself.

9 Q Can you describe the circumstances which led to the
10 charge that you were unsafe around aircraft?

11 A Well, the only thing that I can say is that upon
12 completing a routine flight from White Plains to
13 Binghamton, I opened the door in Binghamton and the door
14 of the airplane freed, and I don't know what caused it
15 but it free fell and I don't know what caused it and
16 that was it. To complete the story, the captain of the
17 aircraft radioed over to the Company on the Company
18 frequency that the door had free-fallen, and so I left
19 the aircraft, and I went inside to the ticket counter,
20 as I was going out on another flight after that on a
21 different airplane, and I picked up the passenger mani-
22 fest, and when I got to the counter, the chief mechanic
23 was on the telephone, and he wanted to know exactly what
24 was wrong with the door. So I told him that the door
25 had free fallen, and all I could tell him was what I

1 could visibly see was wrong with the door, but I didn't
2 know if there was any unforeseen damage down there, and
3 he kept wanting to know what I could see was wrong with
4 the door, so I had to tell him a minimum of two things,
5 that it had free fallen, and I don't know exactly what
6 was wrong with the door.

7 We terminated our conversation, and we
8 sent over a couple of mechanics, and when he went back
9 out to the aircraft, they were out there with the pilot
10 or captain of that particular plane, and I told the
11 mechanics at that time that the door had free fallen and
12 I didn't know if there was anything else other than what
13 I could see, and I got on the different airplane and
14 went on my flight, and that was right, because that was
15 on a Friday.

16 On the Monday I was called in to Mr.
17 Winston's office and I was told that first off, I hadn't
18 told anybody that the door had free fallen, and he asked
19 the chief mechanic about that, and he got him into the
20 office and the chief mechanic said I had not told him
21 about that, and Mr. Winston then said that since I had
22 not told anybody about the door free falling, that it
23 could have opened in flight, and the next flight it
24 could have caused serious in-flight consequences. And
25 they also told me after that there would be additional

1 cut backs, and we were over staffed.

2 Q Can you describe more particularly to the jury what you
3 mean by a free fall? Describe the operation of the door
4 on the airplane?

5 A Well --

6 Q (Interrupting) What kind of plane was that, first?

7 A This was a Metro, and there was a snubbing device on the
8 door which allows the door to lower slowly, and I don't
9 know exactly what happened. Maybe the snubber didn't
10 engage the door, and it just free fell. It didn't come
11 to a certain point and slowly drop and it just came on
12 out.

13 Q For the purpose of the jury, is that snubber analogous
14 to a pneumatic closer like on a screen door which most
15 people are familiar with?

16 A I would say something like that; a shock absorber.

17 Q Now, what procedure did you follow in opening the
18 door of the Metro?

19 A It was just a routine opening. I just opened the door
20 and it took off. I had my hand on a chain. There is
21 a chain on either side of the door, on either side of
22 the step, and it just kept right on going and it took
23 the chain right out of my hand and it free fell.

24 Q Who taught you how to open the doors on the Metro?

25 A It was Paul Briggs was the trainin pilot at that time.

1 Q And was he responsible for teaching new pilots how to
2 open these doors?

3 A I believe he was at that time, yes.

4 Q Did you ever intentionally damage or destroy any
5 property of the Defendants'?

6 A Absolutely not.

7 Q Prior to the time that you were fired, had the Defendant
8 ever told you that they weren't happy with your
9 performance?

10 A I never had any indication. No, I would have to say no.

11 Q Prior to the time that you were fired, were you ever
12 disciplined for any reason?

13 A No.

14 MR. CHALENSKI: Thank you, Mr. Sholl.

15 CROSS EXAMINATION

16 BY MR. RICHARDS:

17 Q Mr. Sholl, let's spend a little time on that Metro door.
18 First of all, you are familiar with the cost of these
19 Metro airplanes? Have you ever discussed it among the
20 pilots?

21 A No. I know it is about three-quarters of a million,
22 I guess.

23 Q One of the most expensive aircraft operated by Commuter?

24 A I would say that that is fair.

25 Q Now, this Metro door is part of the structure of the

1 aircraft, is that correct?

2 A That is correct.

3 Q And before flying on the aircraft, you had to undertake
4 certain training, isn't that correct?

5 A That is correct.

6 Q And part of this training consisted in a ground training,
7 or operation of the door of the aircraft?

8 A It was touched on, but there was no detail on it.

9 Q Did you take training lessons in Broome County?

10 A Yes.

11 Q And did you take training lessons anywhere else, outside
12 of the county?

13 A No, I did not.

14 Q How many lessons did you attend regarding the operation
15 of a Metro, if you can recall?

16 A All of the system -- well, I attended a two day ground
17 school, plus the evening I was -- yes, the other
18 additional training was the in-flight training for
19 possibly one evening.

20 Q And the training officer was Paul Briggs, according to
21 your recollection?

22 A Yes.

23 Q And do you recall any time Ted Bell instructed you
24 as to various features of the aircraft?

25 A No, I don't recall that.

1 Q Now, at that training school, were you instructed as
2 to a procedure to be followed when you opened that door?

3 A No. It was strictly systems and on the aircraft.

4 Q And you have no recollection of any training offered
5 by the company regarding the opening of that door, is
6 that correct?

7 A Mr. Briggs did mention something about the door, mainly
8 and the only thing that sticks in my mind is the flaps
9 that were holding the door in place, and they are easily
10 bent, and not to force the handle when you are shutting
11 the door if it doesn't want to go, and call a mechanic,
12 because it can be damaged, the door.

13 Q Now, the essential part of this door consists of the
14 door, itself, isn't that correct, and then you have a
15 snubber system, or what you would liken that thing to
16 is what you would find on a screen door that prevents
17 it from closing too quickly?

18 A Correct.

19 Q And above the snubber system there is a handle to which
20 the snubber attaches, is that correct?

21 A That is correct.

22 Q Now, in addition to that, there are two chains extending
23 down on either side of the door, is that correct?

24 A That is correct.

25 Q You don't happen to recall what the manufacturer called

1 those chains, do you?

2 A No, I don't.

3 Q Do you recall the expression 'safety chains'?

4 A It could be. I don't recall that expression.

5 Q Do you recall any training to the effect that when you
6 open the door, you are required to hold the safety chain
7 in the event that the snubber system failed to operate?

8 A Not per se, no. It was not given specifically that way
9 during any training session.

10 Q Presumably, from your direct testimony on this particular
11 occasion, you had a hold of one of these chains, right?

12 A That is correct.

13 Q And which chain were you holding? Was it the left or
14 the right one?

15 A It would have been the left one.

16 Q And once -- let me ask you this: did you feel the weight
17 of the door once you released that handle, the weight
18 of the door pushing down?

19 A Yes, I did.

20 Q And as if the door was just falling, or free falling?

21 A I couldn't tell that it was going to free fall at that
22 particular instant. It seemed like the snubbers, if
23 I can remember right and it has been a while, that the
24 snubbers have always been a little difficult and the
25 door would be dropped away from the airplane a little

1 differently on each of them before that snubber
2 would engage. For example, maybe -- I don't know maybe
3 twelve inches on one, and fifteen or sixteen on another.

4 Q But in any event, when you opened the door, could you
5 feel from touching the chain, when the snubber was
6 engaged?

7 A I would have to say that that is true, you could.

8 Q And on this particular occasion, did you feel the snubber
9 engage?

10 A No.

11 Q Now, could you estimate for me how heavy the door is?

12 A I can't. It is heavy, and I have no idea how much it
13 exactly weighs.

14 Q Would you estimate it at over one hundred pounds?

15 A I don't know. I couldn't tell you that.

16 Q You didn't have your hand on the right chain, but just
17 the left, is that correct?

18 A The left, that is right.

19 Q Now, you didn't feel the snubber engage on this
20 occasion, is that correct?

21 A That's right.

22 Q And once the snubber didn't engage, what happened? Did
23 you hold onto the chain and follow it down with the
24 door, or did you just let go?

25 A I had to let go of it.

1 Q And when you say you had to let go, what was going
2 through your mind that you had to let go?

3 A I was thinking that the door was heavy enough, and if
4 I hung onto the chain I would have been on the concrete
5 at the bottom of the step.

6 Q Did the door hit the pavement beneath the plane?

7 A I don't know, it happened so fast.

8 Q Did the chain prevent the door from hitting the pavement,
9 or can't you say?

10 A I can't say. I don't know whether it did or not.

11 Q Now, once that happened, did you inspect both the door,
12 and the snubber, and the snubber handle?

13 A I remember that I could see that the handle had been
14 torn off of the bulk head.

15 Q First of all, did you inspect the door to see if there
16 was any damage?

17 A No, I didn't.

18 Q Is it part of your duties as a co-pilot to make certain
19 that the aircraft is air-worthy?

20 A I would say that that was designated to the captain.

21 Q And so it is your testimony that the co-pilot was under
22 no obligation to report to the company any damage done
23 to the aircraft?

24 A I would say that in the best interest, yes, you would
25 do it. I am not saying it was required.

1 Q But in any event, on this occasion, you didn't check
2 the door to see if there was any damage to the structure,
3 and whether it was twisted, or anything like that, is
4 that correct?

5 A No -- that is correct.

6 Q Did you then check the snubber, itself, and was that
7 still in place?

8 A I don't recall if it was or not.

9 Q Let me ask you about the chains: were they still in
10 place?

11 A To the best of my recollection, the chains were still
12 in place.

13 Q And these chains were attached to the bulk head by a
14 piece of hardware which wasn't at all connected with the
15 snubber handle, isn't that correct?

16 A That is correct.

17 Q Did you happen to observe whether or not this hardware,
18 to which the chain was attached, had been damaged at
19 all?

20 A I don't believe that it was. I am not positive, but
21 I don't believe that it was.

22 Q So, after the door opened, or fell off, were the chains
23 still in place?

24 A To the best of my knowledge, they were.

25 Q Now, the handle to which the snubber attaches, consists

1 of three parts, isn't that correct?

2 A The handle to which the snubber -- three parts? I can
3 think of two. You mean that holds the handle onto the
4 bulk head?

5 Q I am thinking of the total parts of the snubber handle.
6 Are there three sections to it as it is attached to the
7 bulk head, if you can recall?

8 A I can't recall, no.

9 Q But you do recall that this handle was damaged in some
10 form, is that correct?

11 A Yes, that is correct.

12 Q And would you describe to me how this handle was
13 damaged?

14 A I don't know. It happened so fast.

15 Q Well, was the handle still attached to the bulk head?

16 A No, it wasn't.

17 Q Was the handle pulled out or away from the bulk head?

18 A Yes. It was no longer connected to the bulk head.

19 Q Was any portion of the handle severed or broken apart?

20 A If I remember both the top and the bottom, yes.

21 Q And so the handle was broken on both the top and the
22 bottom of the snubber?

23 A Of the handle.

24 Q I am sorry. Broken on both the top and the bottom?

25 A That is correct.

1 Q Now, was it broken all of the way through, or only part
2 way through?

3 A No, it was all of the way through.

4 Q Now, once the accident happened, do I understand your
5 testimony that you contacted maintenance, or the pilot
6 contacted maintenance?

7 A The captain did. He radioed over for me, and when I
8 went back into the counter --

9 Q (Interrupting) And the captain of that flight was
10 Michael Kleitz?

11 A That is correct.

12 Q And while this accident happened, was the captain still
13 in the left seat?

14 A Yes.

15 Q And once it happened, did you report to the captain what
16 had happened?

17 A Yes, sir.

18 Q And then I gather he radioed for maintenance, is that
19 correct?

20 A That is correct.

21 Q And when you reported to Captain Kleitz, did you advise
22 him that the door had free fallen?

23 A I did.

24 Q Now, after the report was made to maintenance, what
25 did you do then?

1 A Now, this is after it was reported to maintenance by
2 Captain Kleitz?

3 Q Were you present when Captain Kleitz reported to
4 maintenance?

5 A No, I was down with the passengers. I was at the foot
6 of the thing. When it happened I told Captain Kleitz,
7 and he radioed, and I went down the steps.

8 Q Did you discuss this accident with any maintenance
9 personnel at that time?

10 A I did, when they were sent over from the hangar, before
11 I went on my next flight.

12 Q Do you recall whether one or two men from the maintenance
13 department came over?

14 A There was two men sent over.

15 Q Do you happen to recall what their names were?

16 A I think it was Fred Mays, and Gary Francisco, I believe
17 was his name.

18 Q And did you then again advise the men as to what
19 happened?

20 A I did.

21 Q And did you advise them that the door had free fallen,
22 which possibly could be a structural problem?

23 A Yes.

24 Q And did you observe what action they took in regard
25 to the door, once you reported this information to

1 them?

2 A I did not. My next flight was waiting for me. I got
3 on the airplane and left.

4 Q Were you intending to leave with that particular Metro
5 on the next flight?

6 A The captain of the airplane was, I was not on that
7 airplane.

8 Q My only question is that you had another scheduled flight,
9 is that correct?

10 A Yes.

11 Q And was your next scheduled flight with this aircraft?

12 A No, the Captain's was.

13 Q I am sorry?

14 A The Captain's was.

15 Q But the aircraft was scheduled to go up again?

16 A Yes.

17 Q And Kleitz was going to be the captain?

18 A Right.

19 Q And after the maintenance team arrived, did you stay
20 around to watch what they did, or did you leave?

21 A No, I left. I had to leave.

22 Q And you had no idea of what they did to the aircraft?

23 A No.

24 Q And did you subsequently learn that they had grounded
25 the aircraft?

1 A I did hear that.

2 Q Did you subsequently learn that the door, being part of
3 the structure, had twisted and no longer could maintain
4 the pressure within the aircraft?

5 A I didn't hear that, sir.

6 Q Did you have any further conversations with any member
7 of the maintenance department regarding how the accident
8 happened?

9 A No. As I said, this was on a Friday evening. I was
10 off for the weekend, and Monday I was told to report to
11 Mr. Winston's office, and so I had no time. I did not
12 speak to the mechanics at all.

13 Q I gather that when you came to the date that you were
14 terminated -- by the way, when was that?

15 A I was terminated on the 9th. The 6th was my last week
16 of work in December.

17 Q And when did this incident happen?

18 A It happened on the 6th.

19 Q And you were terminated that same day?

20 A No, I was terminated on Monday, the 9th.

21 Q The end of that week?

22 A Yes.

23 Q And you had a conference with Mr. Winston concerning
24 the termination, is that correct?

25 A That is correct.

1 Q And did he specifically mention the door incident to you

2 A Yes, he did.

3 Q And did he indicate to you that he was concerned about
4 how the accident happened?

5 A No, not particularly.

6 Q Did he indicate to you that in his own judgement perhaps
7 the accident itself was intentional?

8 A No, because I understood, which I had gotten feed back
9 from other people, that they thought I had intentionally
10 done it and --

11 Q (Interrupting) I am sorry, just your conversation with
12 Mr. Winston at the time you were terminated?

13 A This was part of the conversation.

14 Q I see.

15 A And I said that I understand that you think I intentionally
16 did it, and he said, 'No, that is not the point, no,
17 I don't believe that you did it intentionally.'

18 Q Did Mr. Winston indicate that he was very concerned with
19 the fact that it was not reported to maintenance, that
20 the door had free fallen?

21 A Yes, he did mention that.

22 Q And what did you say in response to his concern?

23 A I told him that I had talked to the chief of maintenance
24 on the telephone and I had told him that the door had
25 free fallen.

1 Q Now, from your testimony, I gather that you had attended
2 one or more union meetings prior to your discharge, is
3 that correct?

4 A That is correct.

5 Q And you attended one meeting which was a week after --
6 I will withdraw that question. You attended one meeting
7 the second week of October, is that correct?

8 A I believe that is correct.

9 Q Now, Mr. CALder was present at that meeting?

10 A Yes.

11 Q And in the course of the meeting, was it suggested by
12 anyone that ways should be figured out to cost the
13 company money?

14 A No.

15 Q Was that suggested at any meeting that you attended that
16 fall?

17 A I would have to say yes, from the standpoint, I think,
18 that the pilots wanted a little additional money.

19 Q I say costing the company money, and I mean things
20 like fuel consumption, and driving at certain altitudes --

21 MR. CHALENSKI: At this point, Your
22 Honor, he is going beyond the direct. If he is going
23 to continue this line of questioning --

24 THE COURT: (Interrupting) Well, it
25 seems to me that you are miles off the target here,

1 but no one had objected up to this point. I don't
2 see the relevancy of this, Mr. Richards.

3 MR. RICHARDS: Intentional as to damage
4 to the aircraft, Your Honor, being discussed at union
5 meetings.

6 THE COURT: All right, but you don't have
7 to go into every last detail.

8 MR. RICHARDS: I have no further questions.

9 MR. SHANAHAN: I have nothing.

10 RE-DIRECT EXAMINATION

11 BY MR. CHALENSKI:

12 Q Was intentional accidents ever discussed at any of those
13 meetings?

14 A No.

15 Q Were any intentional accidents ever discussed among the
16 pilots or co-pilots of the Defendant?

17 A No.

18 Q Did you ever observe any intentional accidental damage
19 to property owned by the Defendant?

20 A No, I did not.

21 Q Did you ever intentionally damage any property owned
22 by the Defendant?

23 A Absolutely not.

24 Q Are you an airplane mechanic?

25 A No, I am not.

the door had free fallen?

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t plane, after the door had

last see the plane?

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15

(After a short recess, the proceedings

16

were resumed.)

17

MR. CHALENSKI: The Government calls

18

Mr. William M. Lamos.

19

W I L L I A M M. L A M O S

20

Called as a witness, being first duly sworn, was

21

examined and testified as follows:

22

DIRECT EXAMINATION

23

BY MR. CHALENSKI:

24

Q Where do you reside?

25

A Lexington, Kentucky.

U.S. COURT REPORTERS
FEDERAL BUILDING
ALBANY, N. Y.

whether -- excuse me, strike
the one who was competent
of an aircraft, or the skin

approached the plane after
e they airplane mechanics?
know for sure. But I know
e, and the power plant, and

e to inspect the door, is

y would be responsible for

1 Q What I mean is that you went to get another flight
2 that day?

3 A That is right.

4 Q And where was the plane when you were getting that other
5 flight?

6 A It was sitting on the ramp.

7 Q And was Kleitz still in charge of it?

8 A Yes, he was.

9 MR. CHALENSKI: Thank you, Mr. Sholl.

10 (Whereupon, the witness was excused)

11 THE COURT: We will take a short recess.

12 (Whereupon, the Jury was excused.)

13 THE CLERK: Court stands for a short

14 recess.

1 Q And what is your occupation?

2 A I am at present unemployed and I am a student at the
3 Theological Seminary in Lexington, Kentucky, and a
4 candidate for the priesthood in the Episcopal Church.

5 Q And are you also a pilot?

6 A Yes, sir.

7 Q And how long have you been a pilot?

8 A Since 1963.

9 Q How many hours do you have in the air?

10 A Six thousand hours.

11 Q Do you have your airline transport rating?

12 A Yes.

13 Q And when did you get that rating?

14 A 1973.

15 Q Were you employed by the Defendant in this action,
16 Broome County Aviation and Commuter Airlines, Inc.?

17 A Yes, sir.

18 Q And what was your date of employment?

19 A December 26th, 1973, until December 13th, 1974.

20 Q Did you attend any meetings with regard to organizational --
21 organization of the employees of the Defendant corporation,
22 during August of 1974?

23 A Yes, sir, I did.

24 Q And where did that meeting take place?

25 A We met at the home of Captain Mike Kleitz in Binghamton,

1 New York, or just outside of Binghamton.

2 Q And who was present at that meeting?

3 A As I recall, Theodore Bell, John Herrington, Jon Solberg
4 Paul Briggs, Paul Floto, myself and I believe -- let
5 me think for a second -- Richard Ton.

6 Q And all Captains?

7 A Right.

8 Q And no co-pilots?

9 A No co-pilots.

10 Q And what was the subject matter of that meeting?

11 A We primarily discussed employee unrest about salaries
12 and benefits and specifically vacation plan, and we
13 discussed dispatch duties that were seemingly non-
14 existent as far as dispatchers, per se, with the company.

15 Q There was a statement prepared as a result of that
16 meeting?

17 A Yes, sir, I took notes, and was, in effect, the
18 secretary of the meeting.

19 Q Okay. And who prepared the statement?

20 A I prepared the original statement of what we felt like
21 would be our reasonable bargaining demands, and also
22 was asked to prepare a preamble to that.

23 Q And what was the purpose of that statement?

24 A The purpose was primarily to, I think, to bring to light
25 the unrest of the captains, and to attempt to negotiate

1 at least a little bit with management.

2 Q And did the statement have a person to whom the statement
3 was to be submitted?

4 A It was to be submitted to Mr. Bell, our chief pilot, who
5 was in turn supposed to submit copies to each of the
6 captains, and present our statement to Mr. Winston.

7 Q And did you submit that statement to Mr. Bell?

8 A Yes, sir, I did.

9 Q And did he distribute copies to the captains?

10 A No, sir, he did not. He distributed one copy to Mr.
11 Bill Ferber, who was a captain on attached duty at
12 Dulles International Airport, under contract with I.B.M.
13 But he is the only one that I know of that got a copy
14 of it.

15 Q Do you know whether or not he gave that statement to
16 Mr. Winston?

17 A No, sir, I do not. When I did talk with Mr. Winston
18 later, he gave no hint that he knew anything about it.

19 Q On October 5th, 1974, did you attend a meeting of
20 captains?

21 A Yes, sir, I did.

22 Q Do you know whether there was another meeting that day
23 for the co-pilots?

24 A Yes, sir, there was one preceding the co-pilots, before.

25 Q And this was a different meeting than the co-pilots'

1 meeting?

2 A Yes, sir, separate.

3 Q And did the Defendant Winston speak at that meeting?

4 A Yes, sir, he did.

5 Q And can you tell the jury what he said?

6 A I believe he pointed out several things that the benefits
7 that the company was offering employees. He made
8 several off-the-cuff remarks. But I don't believe that
9 he had any notes prepared for anything, but he did read
10 a prepared statement that he said had been read once
11 before in, I believe, 1970 on a previous occasion when
12 employees were attempting organization for union
13 representation.

14 Q Can you remember any of these remarks that Mr. Winston
15 made?

16 A As I recall, he stated that the union could only hurt
17 the company; that the union was not interested specifically
18 in helping us as employees, but was more interested in
19 the money that they were able to contribute through mostly
20 dues; that the company was doing all right by itself,
21 and in the history of the company there had never been
22 anyone laid off; that if the union did come in, it would
23 necessitate adjusting some of the operating procedures
24 that were in existence; specifically we might have to
25 close down some of the less productive routes and, if

1 necessary, might have to sell some of the airplanes, and
2 if needed, he could check out on our Metro, which is
3 our top-of-the-line airplane in just a few short hours,
4 and there was some talk, as I recall, of selling the
5 company or closing the doors.

6 Q So you say there was talk, by whom?

7 A By Mr. Winston.

8 Q Do you recall Mr. Bell making any statement at that
9 meeting?

10 A Yes, sir I do.

11 Q What did he say?

12 A He had a very short few minutes at the end of the
13 conversation or the briefing that we had gotten, and
14 specifically stated that he felt like we were either
15 voting for either Jimmy Hoffa or for him and he also
16 stated that in the past, we had been allowed -- some
17 of the procedures had been allowed to slide, and perhaps
18 there had been a little bit of oversight, intentional,
19 when there were errors, but from now on, when he flew
20 with us, things would really be tough.

21 Q Did he say what procedures?

22 A Flying procedures.

23 Q And is there an accepted definition of what fly procedures
24 mean, within the company?

25 A My impression, and it didn't leave any doubt in my mind,

1 was he meant on check rides --

2 MR. SHANAHAN: (Interrupting) I object
3 to that as not being responsive.

4 THE COURT: Sustained.

5 BY MR. CHALENSKI:

6 Q Was there an accepted definition in the company of what
7 flying procedures mean?

8 A Yes, check procedures.

9 Q Check procedures, and is that check rides?

10 A Yes, sir.

11 Q And are there any other check procedures?

12 A Not specifically that Mr. Bell would evaluate us on.

13 Q And can you tell the jury what a check ride is?

14 A Yes, sir, a check ride is a ride that is required by
15 each pilot to be flown periodically to determine his
16 competency in the airplane, and proficiency in the type
17 of equipment that he is flying.

18 Q And what was Mr. Bell's role in the check ride?

19 A Mr. Bell was our chief pilot, and as such was considered
20 our chief examiner, and he would be the evaluator on
21 these rides. It would be his position to evaluate each
22 procedure.

23 THE COURT: In other words, he would rate
24 you?

25 THE WITNESS: Yes, sir.

1 BY MR. CHALENSKI:

2 Q And is that as a designee of the Federal Aviation
3 Commission?

4 A Yes.

5 Q And the Federal Aviation Commission requires that you
6 pass a check ride periodically?

7 A Yes, sir.

8 Q And what periods of time?

9 A Well, I think it is required every six months.

10 Q Now, Mr. Bell was authorized then to perform this
11 check ride for the Federal Aviation Administration,
12 and check you every six months?

13 A Yes, sir.

14 Q And if you did not successfully complete the check ride,
15 what was the result?

16 A You were grounded for the interim time, until you had
17 some retraining, or whatever amount of retraining that
18 Mr. Bell determined was needed to be accomplished. And
19 then, you were put back through a recheck to determine
20 if you were satisfactory to his satisfaction at least,
21 and qualified to fly the equipment.

22 Q And by being grounded, you could not fly any flights?

23 A Right.

24 Q And you couldn't do the job?

25 A That is right, sir.

1 Q And were there any additional meetings between October
2 5th, 1974 and November 25th, 1974, between the employees
3 in general, and the Defendants Winston and Bell?

4 A I don't recall any general meetings, but specifically
5 personal meetings, yes.

6 Q And did there come a time when you had personal meetings
7 with the Defendant Winston?

8 A Yes, sir.

9 Q And when did that take place?

10 A I can only estimate -- I don't know the exact date,
11 but my first meeting was in October, the last part of
12 October of 1974.

13 Q The last part of October?

14 A Yes, sir, as I recall.

15 Q And where did the meeting take place?

16 A In Mr. Winston's office.

17 Q Was anybody else present?

18 A Yes, sir, Mrs. Winston.

19 Q Anybody else?

20 A No, sir.

21 Q And what did you say, and what did Mr. Winston say
22 at that meeting?

23 MR. RICHARDS: Excuse me, but the Bill
24 of Particulars, he has not provided any individual
25 meetings, and Mr. Lamos was not individually included

1 in this Bill, and I submit that this is outside of the
2 Bill of Particulars.

3 MR. CHALENSKI: Well, the Bill of
4 Particulars with reference to the threats that the
5 Government intends to prove at this trial. No Bill of
6 Particulars was ordered to be provided as to the names
7 of pilots who had their ballots solicited, and that is
8 one of the counts. The Government intends to prove by
9 this conversation that Mr. Lamos' ballot was submitted --

10 THE COURT: (Interrupting) Overruled.

11 BY MR. CHALENSKI:

12 Q What did you say and what did Mr. Winston say at that
13 meeting, Mr. Lamos?

14 A We had about, I believe, about an hour and a half talk.

15 MR. RICHARDS: I am sorry, but there was
16 a Bill of Particulars provided by the Government, and
17 requesting the names of those pilots that made claims
18 that their ballots were solicited, and Mr. Lamos' name
19 is not included.

20 THE COURT: It is not mentioned in
21 paragraph six.

22 MR. CHALENSKI: Did you say paragraph six,
23 Your Honor?

24 THE COURT: Yes.

25 MR. CHALENSKI: In paragraph six, it did

1 not purport to set forth the names --

2 THE COURT: (Interrupting) That is item
3 six of your Bill. I don't know what I am looking at but
4 it is what Counsel handed me, and it is the Bill of
5 Particulars. I assume that that is what it is.

6 MR. CHALENSKI: I am sorry, but this was
7 in repsonse to a request for discovery. The Government
8 cannot make this a Bill of Particulars.

9 THE COURT: Let me see the demand, and
10 the response to the Bill of Particulars.

11 It is utterly ridiculous that you are
12 not, or cannot agree on what you did or did not do under
13 the Bill of Particulars.

14 Hand me the item that you claim covered
15 the point in your demand, and the Government's response
16 to it.

17 MR. CHALENSKI: The demand was --

18 THE COURT: (Interrupting) Please, let
19 me see this. Which paragraph, Mr. Chalenski?

20 MR. CHALENSKI: It should be item five,
21 Your Honor.

22 THE COURT: Now, what is your response?

23 MR. CHALENSKI: This is apparently my
24 response.

25 THE COURT: Let me see it. I want your

1 response to the fifth demand.

2 Now, what I read is not a response to
3 the fifth demand.

4 MR. CHALENSKI: Just for the order on
5 the discovery that it be provided to the extent that the
6 Government had already agreed to provide it, and to the
7 extent that we were --

8 THE COURT: (Interrupting) That has nothing
9 to do with discovery. The answer to your fifth demand
10 of the Bill of Particulars isn't responsive to it.

11 MR. CHALENSKI: Judge Port demanded that
12 a Bill of Particulars only be provided as to one count
13 of the demand.

14 THE COURT: Well, you purport to give this
15 in response to five. You just gave it to me. I will
16 exclude it. It is all balled up and the prosecution
17 should --

18 MR. CHALENSKI: But Mr. Lamos, did he --

19 THE COURT: (Interrupting) Wasn't he
20 named in the indictment, specifically, this witness?

21 MR. CHALENSKI: Yes, he is, Your Honor.

22 THE COURT: That is adequate. Go ahead.

23 MR. CHALENSKI: Thank you, Your Honor.

24 BY MR. CHALENSKI:

25 Q Mr. Lamos, what did you say and what did Mr. Winston say

1 during the course of that meeting?

2 A I mostly listened, sir. He again reiterated the benefits
3 that he felt like the company was offering us, and
4 basically covered everything except the prepared state-
5 ment that we had in the general meeting with the captains
6 previously. And as we came to the end of that meeting,
7 he asked me how I felt about the union, and what I felt
8 about voting for the union, and I stated at that particu-
9 lar time I would like more time to think about it and
10 I thanked him for his presenting the company's side, and
11 that I had the information from a union representative
12 as well, and that I would like more time to think about
13 it.

14 At which time he requested that I make
15 another appointment with him the following week to give
16 him a final decision.

17 Q And did you see him the following week?

18 A Yes, sir, I did.

19 Q And what conversation did you have at that time with
20 Mr. Winston?

21 A The conversation was basically the same. Mr. Winston
22 and I and Mrs. Winston were in the office, and again at
23 no time did Mrs. Winston participate.

24 Q Did Mr. Winston ask you how you voted?

25 A He asked me first of all, he again reiterated some of

1 the benefits that he felt like the company had given us,
2 and then he asked me specifically -- 'I would like,'
3 he said, 'I would like to talk with you about the ballot,'
4 and at that time I said, 'Mr. Winston, I feel like that
5 is a personal matter, and no one else's business but
6 mine'.

7 Whereupon, the conversation was ended.

8 Q Did you tell him anything with reference to whether you
9 had or had not mailed in your ballot?

10 A No, sir, I had not.

11 Q Did you turn your ballot over to Mr. Winston?

12 A No, sir, I did not.

13 Q Do you recall any signs in the office of Commuter
14 Airlines?

15 A Yes, sir.

16 Q And do you recall what that sign said?

17 A There was a sign on our bulletin board that said to the
18 effect to send in a no ballot is the same as a no vote.

19 Q And you previously testified that you left the employ
20 of the Defendant on December 13th, 1974, and under
21 what circumstances did you leave the employ of the
22 Defendant?

23 A I was fired, sir.

24 Q And did the Defendant tell you what reasons you were
25 fired for?

1 A Specifically, he said I no longer had any repore --

2 Q (Interrupting) Which person said that?

3 A Mr. Winston.

4 Q And what did he tell you?

5 A He said that he felt I had no longer any repore with
6 the company and that I was fired.

7 Q Did that arise all out of any particular circumstances?

8 A Yes, it had. I had refused to test fly an airplane on
9 a fifteen minute turn around.

10 Q And what led up to that refusal?

11 A Okay. There are a couple of things, sir, that did.
12 One of them was that it is not time enough, if you will,
13 on a fifteen-minute turn around and it would mean that
14 I would land at Binghamton at 10:15, and was to depart
15 there at 10:30 on the next leg of my flight.

16 Q And you arrived in Binghamton with a load of passengers
17 from a flight destination other than Binghamton?

18 A Yes, sir.

19 Q And you were to continue on fifteen minutes later?

20 A Yes, sir.

21 Q Okay.

22 A However, operations informed me that I was to test fly
23 an airplane in the interim, and that is impossible. I
24 could have test flown an airplane but I would have been
25 delayed by at least 30 minutes, and perhaps as much as

forty-five if I were to be very precise about the test flight of the airplane.

THE COURT: And in the fifteen minute interval you were to test fly an airplane?

THE WITNESS: Yes.

THE COURT: Who instructed you to do this?

THE WITNESS: Operations, sir.

THE COURT: Who is operations?

THE WITNESS: The person I talked to specifically on the radio was one of the girls in the office who has a quite a lot to do with our scheduling.

THE COURT: And you refused to do this?

THE WITNESS: Yes, sir, I did. Now, what had brought me up to this: for approximately two weeks, Mr. Winston had been planning to combine two early morning flights to Westchester County and Newark, New York. They were separate flights at the time, and the schedule had not been changed so that the two were combined in any way. However, because of loads, I assume, they were sending the larger airplane that we had, and combining the two flights. Businessmen from Westchester County or out of White Plains, coming to Binghamton, normally came there for the day, and these were the complaints that I got from the passengers.

1 By coming directly back from White Plains, it was only
2 about an hour flight, and they could get back and have
3 nine o'clock appointments in the morning which would
4 give them a full day to work. But by combining the two
5 flights to White Plains and to Newark, it delayed them
6 by almost an hour and fifteen minutes, and instead of
7 being position in Binghamton at nine or shortly there-
8 after, they were getting there closer to eleven. And
9 the sad part is that they were not told about this when
10 they purchased their tickets at White Plains, and they
11 expected when they got on board my airplane to come
12 directly back to Binghamton, and instead we went from
13 Binghamton by company order to Newark, and sat on the
14 ground at Newark from thirty to forty-five minutes
15 because our scheduled departure time was not until 9:30.

16 BY MR. CHALENSKI:

17 Q And what was the purpose of the test flight of the other
18 plane?

19 A The test flight, building up to this: I had been
20 getting the complaints of the passengers about this
21 particular flight, and when I called in from Newark,
22 back into Binghamton, I called in and there had been
23 maintenance performed on the airplane that they wanted
24 me to test fly. It was not an unusual procedure to
25 change planes at Binghamton for the next leg of the

1 flight. But if there wasn't anything wrong with the
2 airplane, I could easily change airplanes in a fifteen-
3 minute turn around.

4 When they told me I had to test fly the
5 airplane in this short fifteen-minute turn around, when
6 I got on the ground at Binghamton, I went into the
7 maintenance hangar the first thing, and asked maintenance
8 when they had completed the work on the airplane. Mr.
9 Fred Maize who is one of the maintenance supervisors
10 stated that the particular airplane that I was to change
11 to and to test fly had been completed the night before.
12 Some time later --

13 Q (Interrupting) What time was --

14 THE COURT: (Interrupting) Mr. Chalenski,
15 I don't see the slightest materiality about what you
16 are proving through this witness in this combination
17 flight. Let's get to something material here.

18 BY MR. CHALENSKI:

19 Q What time did you arrive in Binghamton?

20 A 10:15.

21 Q Morning or evening?

22 A A.M., and when I refused to --

23 Q (Interrupting) When prior to that, had the plane which
24 you were supposed to test fly, been completed?

25 MR. SHANAHAN: I object to that as

1 necessarily hearsay. He is talking about something --

2 THE COURT: (Interrupting) Sustained.

3 BY MR. CHALENSKI:

4 Q What was the purpose of the test flight?

5 A To determine the air worthiness of the airplane to
6 carry passengers.

7 Q A plane which had previously just been repaired?

8 A Yes, sir.

9 Q And when had this been completed?

10 A During the night, the maintenance man told me.

11 Q Do you know what time?

12 A No, sir, just by the night shift, so he said.

13 Q And that plane that you were supposed to test fly would
14 be the one that you would continue on with your flight
15 to Elmira?

16 A Yes, sir.

17 Q And you refused to test fly that plane?

18 A Yes, because it would delay me by thirty-five to forty
19 minutes.

20 Q And did you have conversation with the Defendant Winston
21 concerning that refusal?

22 A Yes, sir, I did.

23 Q And when did that take place?

24 A Just a few minutes after I talked to the maintenance
25 man. I walked into Operations, and Mr. Winston was

1 busy, and Mrs. Winston asked me what I wanted, and I
2 said , 'Would you tell Mr. Winston that I refuse to test
3 fly the airplane.' Whereupon she said, 'well, if you
4 refuse to test fly that airplane, then I assume that you
5 don't want to work for the company anymore', I said,
6 'No, I didn't say that. I don't want to delay my
7 passengers into Elmira'. She said, 'Well, as far as I
8 am concerned, you have quit. You don't want to test fly
9 an airplane.' I said, "Well, I am sorry, but I didn't
10 quit. The airplane that I have been flying is in
11 perfectly good shape, and I will take my passengers onto
12 Elmira with that, if there are no other planes available,
13 but I will not delay my passengers for a test flight.'

14 Whereupon, Mr. Winston came out of his
15 office and he said, 'What is going on out here,' and
16 I explained to him that I felt like there was no need
17 with other equipment available that was in perfect
18 operating condition why I couldn't take some other air-
19 plane that was working fine, and not delay my passengers
20 and get them into Elmira on time.

21 Q And what did the Defendant say?

22 A He said, 'I believe you no longer have any repore with
23 this company and you are fired.'

24 Q And were there other planes available to fly the
25 passengers?

1 A Yes, sir, there were.

2 Q And did, in fact, another plane other than the one that
3 you were supposed to test fly, take the passengers to
4 Elmira?

5 A No, sir, it did not.

6 Q Did the plane that you were supposed to test fly carry
7 the passengers to Elmira?

8 A No, sir, it did not.

9 THE COURT: How did the passengers get
10 to Elmira?

11 THE WITNESS: They took a different
12 airplane from the one that I had, and completely different
13 from either airplane that we were talking about.

14 THE COURT: Was neither the test plane
15 nor the one that you flew in from Newark on, is that
16 right?

17 THE WITNESS: Yes, sir.

18 BY MR. CHALENSKI:

19 Q During the course of your employment with the Defendant
20 had any other pilots, to your knowledge, been asked to
21 test fly an airplane during a fifteen minute stop over?

22 A No, sir, no.

23 MR. SHANAHAN: I object to that as
24 immaterial.

25 THE COURT: Overruled.

1 THE WITNESS: No, sir.

2 MR. CHALENSKI: Thank you, Mr. Lamos.

3 THE COURT: Before you had this union
4 activity, had you ever been asked to test fly a plane
5 during a fifteen minute layover?

6 THE WITNESS: Sir?

7 THE COURT: Before you got involved in
8 this union activity, had you ever been instructed to
9 test fly a plane during a fifteen minute layover?

10 THE WITNESS: No, sir, I never had.

11 CROSS EXAMINATION

12 BY MR. RICHARDS:

13 Q Mr. Lamos, you were on a flight from Newark to
14 Binghamton, is that correct?

15 A Newark to Binghamton, yes, sir.

16 Q And at the Binghamton Airport you were to change
17 passengers to another aircraft to go on the last leg
18 of the journey to Elmira, is that correct?

19 A Yes, sir.

20 Q And the company had scheduled another aircraft or
21 assigned to you another aircraft to take these passengers
22 to Elmira, is that correct?

23 A Yes, sir.

24 Q And this particular aircraft had just undergone major
25 repair by the maintenance department, is that correct?

1 A Repair, yes, sir.

2 Q And what is the company policy that whenever maintenance
3 major maintenance or repairs are done on an aircraft,
4 it must be test flown before it is used for passenger
5 service, is that correct?

6 A That is federal regulations, sir.

7 Q And you disagreed with the company policy of having the
8 passengers wait until you did test fly an airplane,
9 is that it?

10 A No, it was not company policy to have the passengers
11 wait.

12 MR. RICHARDS: That is all.

13 THE COURT: Do you expect to be some
14 time, Mr. Shanahan?

15 MR. SHANAHAN: I do.

16 THE COURT: We will adjourn now until
17 ten o'clock tomorrow morning, and don't talk about the
18 case, and don't let anybody talk about it with you.

19 (Whereupon, the Jury was excused.)

20 THE COURT: Mr. Chalenski, how are we
21 doing schedule wise?

22 MR. CHALENSKI: Pretty well, referring
23 to the schedule. We expect to be finished probably by
24 the middle of Monday morning.

25 THE COURT: All right.

1 MR. CHALENSKI: Tomorrow we have a tape
2 which we hope the transcript will work out on, and that
3 will take about an hour.

4 THE COURT: Can't you read the transcript?

5 MR. CHALENSKI: Excuse me?

6 THE COURT: Why will it take an hour?
7 Do you have to play a record? Do you have the transcript?
8 Why do you not read it? It will take a lot less time.

9 MR. CHALENSKI: Read it to the jury, Your
10 Honor?

11 THE COURT: Yes, sir .

12 MR. CHALENSKI: I don't believe that that
13 would be nearly --

14 THE COURT: (Interrupting) I think it
15 would. Most of those tapes are almost unintelligible
16 and I have not heard one yet, in seventeen years that
17 is intelligible throughout. According to my experience
18 it is poor quality. I have not heard this one, but
19 I would be amazed if it were. It seems to me it only
20 delays things and serves to confuse.

21 MR. CHALENSKI: I am not sure I could
22 read it much faster. It is a monologue by the Defendant
23 and he was speaking regularly through it. There are
24 very few pauses in the tape, itself. I think that the
25 time would be about the same.

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THE COURT: All right.

MR. CHALENSKI: Thank you, Your Honor.

THE CLERK: Court stands in recess until
ten o'clock tomorrow morning.

(Whereupon, the Court was adjourned at
four p.m., until ten o'clock the following morning.)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

Plaintiff :

-against- :

CRIMINAL NO.
75-CR-83

JERRY WINSTON, BROOME COUNTY :
AVIATION, INC., COMMUTER AIRLINES, :
INC., and THEODORE (TED) BELL, :

Defendants :

-----X

CONTINUATION OF PROCEEDINGS in
above-entitled matter, came on before the United
States District Court, Northern District of New
York, at Auburn, New York, on Friday, June 4,
1976, at 10:00 a.m., before the Honorable Lloyd
F. MacMahon, United States District Judge.

VOLUME IV

1 A P P E A R A N C E S:

2 The Honorable JAMES M. SULLIVAN, JR.,
3 United States Attorney, Northern District of New York,
4 Federal Building, Syracuse, New York, by ARTHUR A.
5 CHALENSKI, ESQ., Assistant United States Attorney,
6 Of Counsel.

7
8 -and-

9
10 BECKER, CARD, LEVY & RICHARDS, P.C.,
11 141 Washington Avenue, Endicott, New York 13760,
12 Attorneys for Defendants Jerry Winston, Broome
13 County Aviation, Inc., and Commuter Airlines, Inc.,
14 by RODNEY A. RICHARDS, ESQ., Of Counsel.

15
16 -and-

17
18 PAUL R. SHANAHAN, ESQ., Syracuse,
19 New York, Attorney for Defendant Theodore (Ted)
20 Bell.

1 (Whereupon, the following proceedings
2 took place before the Court, the Jury not being
3 present.)

4 THE COURT: Do you have a problem, did
5 you say?

6 MR. CHALENSKI: The Defendants have
7 requested some 3500 material on Mr. Lamos, and this
8 one paragraph I did not turn over to them, and I will
9 submit it to the Court for an in camera inspection.

10 Nothing was asked of the witness, Mr. Lamos
11 regarding this conversation on the direct examination.
12 I will turn this slip over when the person named in
13 it takes the stand, with Your Honor's permission
14 (Offering to the Court).

15 THE COURT: Whose statement is this?

16 MR. CHALENSKI: This is a statement of
17 Mr. Lamos, related to the F.B.I. Agent, concerning his
18 conversation with another pilot. I do plan to call
19 this other pilot to the stand.

20 THE COURT: All right. I think as long
21 as you did get into this, it would have to be hearsay
22 anyway as to this.

23 MR. CHALENSKI: Yes, it would have been.

24 THE COURT: All right.

25 MR. CHALENSKI: Thank you, Your Honor.

1 THE COURT: All right, we will bring in
2 the jury.

3 (Whereupon, the following proceedings
4 took place before the Court and the Jury.)

5 THE COURT: Gentlemen, proceed.

6 MR. CHALENSKI: Mr. Lamos will return
7 to the stand.

8 THE CLERK: Mr. Lamos, you are still
9 under oath.

10 W I L L I A M M. L A M O S

11 Called as a witness, being previously duly sworn,
12 was further examined as follows:

13 CROSS EXAMINATION (Continued)

14 BY MR. SHANAHAN:

15 Q Mr. Lamos, you told us that there was a meeting at the
16 residence of Mr. Kleitz, that took place on August of
17 1974?

18 A Yes, that is correct. There were actually two.

19 Q That is so. And Mr. Kleitz, at that time, was a
20 Captain as you were?

21 A Yes, sir.

22 Q And I think that you indicated to us that at that
23 meeting there was Mr. Bell -- Ted Bell, Mr. Herrington,
24 Mr. Solberg, Mr. Briggs, Mr. Floto and yourself, and
25 would that be right?

1 A Yes, sir. I don't know if that is all of the people,
2 but those, at least, were there, yes, sir.

3 Q And this, I take it, was an informal meeting at someone's
4 residence, as you described it, would that be so?

5 A Yes, sir.

6 Q And there were various matters discussed that were of
7 some interest to the people that were there, in
8 connection with their working conditions, would that be
9 right?

10 A That was the specific purpose of the meeting, to discuss
11 grievances, yes, sir.

12 Q All right. And among other things, I think you said
13 that you discussed the matter of salary benefits, and
14 vacations, and dispatching duties, would that be correct?

15 A Yes, sir, that is.

16 Q And all of that related, of course, to your employment
17 with Commuter Airlines, would that be so?

18 A Yes, sir.

19 Q And in connection with that meeting, you acted as sort
20 of a secretary, and kept track of the various matters
21 that had been discussed, would that be right, up to this
22 point?

23 A Yes, sir.

24 Q Now, following that there came a time when you indicated
25 that you prepared some type of a summary of what that

1 discussion had been?

2 A Yes, sir.

3 Q And you gave it to Mr. Bell?

4 A Yes, sir.

5 Q Now, do you recall, at the time of that meeting, that
6 there were some captains who were not present at that
7 meeting, due to either assignments, or vacations or
8 something of that nature?

9 A Only perhaps two. One was missing for sure and that
10 was Captain Hark Excell or Jerry Excell and he was
11 moving his family to North Carolina.

12 Q I see. And was there also absent from that meeting,
13 as you recall it, Captain Reeve, Don Reeve?

14 A No, Don Reeve was flying, I believe.

15 Q Are you sure about that?

16 A That is speculation. I can't say. I believe he was.

17 Q But in any event, Mr. Reeve was somewhat of a senior
18 pilot in point of service, was he?

19 A I would say he ranked about in the middle, sir.

20 MR. CHALENSKI: This is getting beyond
21 the scope of direct, Your Honor.

22 MR. SHANAHAN: We discussed this same
23 meeting, Your Honor.

24 THE COURT: Yes, overruled.

25 BY MR. SHANAHAN:

1 Q Well, after that meeting was concluded, was there some
2 discussion then, Mr. Lamos, that before any of these
3 matters were taken up with Mr. Winston, that there
4 would be another meeting when those that were absent
5 might be able to attend and give their views?

6 A No, sir, there wasn't. The procedure was specifically,
7 I was to make up the proposal in written form covering
8 those things that we had discussed, and before the
9 meeting adjourned, everyone agreed on the notes that I
10 had -- everyone that was present.

11 Q You prepared them right there?

12 A I prepared the notes, but I didn't prepare a proposal
13 there.

14 Q The proposal itself came at a later time, and perhaps
15 a little more complete form and would that be it?

16 A Yes, with a preamble.

17 Q Now, you have indicated to us that some of the captains
18 were not present?

19 A Yes, sir.

20 Q And wasn't there some talk that they should be consulted
21 with reference to this before the matter was actually,
22 by Mr. Bell, taken up with Mr. Winston?

23 A Yes, sir. I was to get the proposal back to Mr. Bell
24 for his review, and approval as soon as possible, which
25 I did the following day.

1 Q All right.

2 A And the captains each were to get a copy of it distri-
3 buted by Mr. Bell, after he looked at it and approved
4 it that week, and it was to be reviewed that week from
5 Monday through Friday, and by Friday, all of the captains
6 were to sign that indicating their approval, and then
7 it was to be presented to Mr. Winston.

8 Q All right. So that, I take it, from what you are saying
9 now, Mr. Lamos, that the captains who were absent from
10 that meeting were to receive copies of this, and if they
11 approved it at a later time, would sign it, would that
12 be the way it was?

13 A If they decided to go with the group that was present,
14 yes, sir.

15 Q And you have indicated that Captain Excell, was that the
16 name that you mentioned, that he was one of those that
17 you were sure was missing?

18 A Yes, sir.

19 Q And Mr. Reeve, you are apparently not sure whether he
20 was at the meeting or not?

21 A I don't know -- I can't tell you for sure if he was at
22 the meeting, but I do know I gave him the proposal the
23 following day, before I gave it to Mr. Bell, so that he
24 could review it.

25 Q I see, all right. Oh, you gave a copy to --

- 1 A (Interrupting) No, sir, I gave him the copy to read as
2 I was taking it over to Mr. Bell, to hand it to him.
3 Q I see, for him to look over?
4 A Yes.
5 Q I see.
6 A For his perusal to see it.
7 Q All right. Then, was there, then, a second meeting at
8 Mr. Kleitz' home?
9 A Yes, sir, there was.
10 Q And you have indicated to us that that first meeting was
11 some time in August?
12 A Yes, sir.
13 Q And was the second meeting a similiar type meeting?
14 A Yes, sir, it was.
15 Q And who was present at that meeting, do you recall?
16 A Everyone that was present at the first, except for Mr.
17 Bell and additionally, Mr. Prusty.
18 Q Who is that?
19 A Prusty.
20 Q Who is that?
21 A He was recently hired -- I think it is right. This
22 first time he was invited because he just came to work
23 for the company, and we didn't feel he was aware of
24 all of the procedures. The second time he was invited,
25 and he came.

1 Q And was he a captain, or a pilot?

2 A He was a pilot. I believe he was a captain-trainee,
3 but I believe that you would have to check company
4 records to find that out. Our impression was that he
5 was a captain, or was going to be a captain, and was
6 checked out as a captain, and that is why he was invited.

7 Q He was present at the second meeting?

8 A Yes, sir.

9 Q And Mr. Bell was not present?

10 A No, he was not.

11 Q Was he asked to attend, do you know?

12 A Not that I know of, sir, but I don't know what the other
13 people did. He wasn't, by me.

14 Q Now, when was that second meeting held?

15 A Approximately two weeks after the first.

16 Q Two weeks?

17 A Yes, sir.

18 Q And would that have been done in perhaps early September
19 or the latter part of August?

20 A Yes, sir.

21 Q And now, up to this point, had you received in your
22 mailbox any letter indicating that contact had been
23 made with some outside labor organization?

24 A No, sir, I did not.

25 Q Did there come a time, Mr. Lamos, when you did receive

1 in your mailbox an unsigned letter or communication?

2 A Yes, sir.

3 Q And could you tell us about when that was, as best you
4 recall it?

5 A The week following our second meeting.

6 Q After the second meeting?

7 A Yes, sir.

8 Q And you did receive, of course, one of those letters
9 in your box, as well?

10 A Yes, sir, I did.

11 Q At the time that you received it, did you know who had
12 prepared it or sent it out?

13 A No, sir, I did not. It was ironical really, because
14 we had, as the captains, we had been discussing this.
15 I had no idea.

16 Q I see.

17 A No idea at all.

18 Q So that in any event, when you received it, it was a
19 surprise to you?

20 A Yes, sir.

21 Q Okay. Now then, following that, you told us that you
22 did attend the meeting that, I think that you indicated
23 was held on October the 5th in the company offices?

24 A Yes, sir.

25 Q And that was a meeting at which Mr. Bell was present,

1 and Mr. Winston was present?

2 A Yes, sir.

3 Q And assembled there were all of the captains at the
4 meeting that you attended?

5 A As far as I know they were, yes, sir.

6 Q And do you know as to whether there had been, that same
7 day, a separate meeting of co-pilots?

8 A Yes, sir, there was.

9 Q Was the co-pilot meeting first, or the meeting of the
10 pilots that you attended first?

11 A As I recall it, the co-pilot meeting was first.

12 Q And the meeting that you attended then would have been
13 some time later in that same day?

14 A I believe that that is correct.

15 Q And I think that you indicated to us that that was a
16 Saturday, was it?

17 A Yes, sir.

18 Q All right. And now, you said that at that time, if I
19 followed you correctly, and I had a little trouble
20 hearing all of this, but at that time, in the course of
21 Mr. Winston's remarks, he read from some statement?

22 A Yes, sir, that is correct.

23 Q And when he completed whatever he had to say, that
24 Mr. Bell made a short statement to those that were
25 present, would that be so?

1 A Yes, that is correct.

2 Q Now, you said that Mr. Bell said that, among other
3 things, that certain procedures had been allowed to
4 slide, did I follow that statement correctly?

5 A Yes, sir, that is in effect what he said.

6 Q I take it that what you are telling us is that what you
7 interrupted his remarks to be is that --

8 A (Interrupting) That is the best I can give you sir,
9 after eighteen months.

10 Q You are not attempting to give us his precise language?

11 A No, sir.

12 Q Would that be so, all right. Have you had an opportunity
13 to read a transcript or hear a tape that was taken at
14 this co-pilots meeting that was held earlier that day?

15 A No, sir, I have not. I have not heard anything.

16 Q Well, let me ask you this: was what Mr. Bell said
17 substantially this: people know that I have bent the
18 policies -- I have bent the rules and I have done that
19 for them because I have had faith in them as people and
20 as professionals, and because I believe in them and
21 still believe in them, but we have got this thing
22 coming up, and I am sincerely expecting your support,
23 and is that the substance of what he said?

24 A No, sir, it is not: not as I have my own impression.

25 Q That is what I am asking you about.

1 A Well --

2 Q Well, you have indicated that he said something about
3 flight procedures?

4 A Yes, sir.

5 Q And do you recall precisely what he said about flight
6 procedures?

7 A When I came away from the meeting there was no doubt
8 in my mind that he was talking about --

9 Q (Interrupting) I am not asking you about the doubt in
10 your mind. Do you recall what he said?

11 A I recall that he was talking about check rides, and
12 when he was flying with me, or any of the other captains,
13 that he would not allow any errors of any kind. He said
14 things would get tight.

15 Q Well, was that word 'check rides' used?

16 A No, sir.

17 Q There was no reference to check rides as such?

18 A He said when I am flying with you, and that is the only
19 time that Mr. Bell flew with the captains.

20 Q I see. Well, now, Mr. Bell was the chief pilot, of
21 course, of Commuter Airlines?

22 A Yes.

23 Q And he was also designated by the Federal Aviation
24 Agency?

25 A Yes, sir.

1 Q To administer check rides, is that right?

2 A Yes.

3 Q And pursuant to that authorization, he would periodically
4 administer check rides to both pilots and co-pilots?

5 A Yes, that is correct.

6 Q And the purpose of check rides, of course, is to check
7 the proficiency of both the pilots and the co-pilots?

8 A Yes, sir.

9 Q And as a pilot, as a captain, was it required, as far
10 as you were concerned, as an illustration, that you
11 take the check rides every six months?

12 A Yes, sir.

13 Q And this check ride, was that a fairly lengthy procedure?

14 A It could be. There were options that the designee had
15 as to what had to be accomplished. There were certain
16 maneuvers that had to be done, specifically, but there
17 were additional maneuvers that the designee wanted to
18 examine the captain on, and he could, at his discretion.

19 Q To give a captain a check ride, such as a check ride
20 that you would experience --

21 A Yes, sir.

22 Q -- you would go up in a plane with the person who was
23 administering the check, would that be right?

24 A Yes, sir.

25 Q And that person would tell you various procedures in

1 flying that you were to go through, and he would check,
2 presumably, your proficiency in carrying out those vari-
3 ous procedures, would that be the substance of it?

4 A Yes.

5 Q And would a check ride ordinarily last a couple of hours,
6 or not that long?

7 A It could be as long as an hour, and as much as two hours
8 or two and a half, depending on the maneuvers to be
9 checked.

10 Q And are these check rides administered in different
11 types of planes?

12 A Yes, sir. It was at the discretion, again, of the
13 company examiner, who was Mr. Bell, to examine the
14 captain in any of the airplanes that he was to be
15 current in, or expected to be proficient in.

16 Q Now, some of the check rides were administered directly
17 by representatives of the Federal Aviation Agency, were
18 they not?

19 A They were.

20 Q And was there an office of that Government Agency in
21 Rochester, and did men come from Rochester from time
22 to time for the purpose of administering check rides?

23 A Yes, the Agency Aviation District Office in Rochester,
24 Yes, sir.

25 Q And did representatives of that office, from time to

1 time, come and either administer check rides, themselves,
2 or be present in the airplanes when Mr. Bell would
3 administer check rides?

4 A Yes, sir, as far as I know.

5 Q Now, in addition to Mr. Bell, was there also another
6 individual, another captain working for Commuter Airlines,
7 who was also designated by the Federal Aviation Agency?

8 A Yes, sir, Mr. Briggs.

9 Q Mr. Briggs?

10 A Yes, sir.

11 Q And did he administer check rides from time to time of
12 pilots and co-pilots?

13 A Yes, sir.

14 Q And during the duration of your employment, Mr. Lamos,
15 how much such check rides did you have?

16 A You mean total check rides that I am in?

17 Q Yes. I think that you said that you were there a year
18 or something like that?

19 A I had, again, there are check rides for other airplanes,
20 and when you transfer to another airplane you get an
21 additional check ride, so I probably had five.

22 Q And were they all administered by Ted Bell?

23 A No, sir, they were not.

24 Q Well, who else administered check rides to you?

25 A Captain Briggs.

1 Q Anyone from the Federal Aviation Agency?

2 A Just on route check, sir.

3 Q But you did have some --

4 A (Interrupting) I had them ride with me on two occasions
5 on a route check.

6 Q And a route check, is that somewhat different than a
7 check ride?

8 A Yes, sir, somewhat. They do monitor your procedures,
9 but as far as going beyond what is required, on the
10 specific flight, the examiner would not require anything
11 extra.

12 Q Well, a route check means that it is a check of your
13 performance from the point or origin, to wherever you
14 are going, on a particular route?

15 A Yes, sir, and the procedures involved in getting there,
16 such as the approach, and whatever approach you are
17 designated he would monitor, and you only have one
18 approach that would be --

19 Q (Interrupting) And so that if you were on a run, for
20 instance, between Binghamton and Newark, and you had
21 a route check, that would mean that someone would ride
22 that trip with you?

23 A Yes, sir.

24 Q And observe your operation of the plane as you traveled
25 from Binghamton to Newark, if that is where you were

1 A Sure.

2 Q And your landing procedures, and so on?

3 A That is correct.

4 Q I see, all right. Well, now, let me ask you: in
5 connection with check rides that Mr. Bell administered
6 to you, was there anything unusual about the check rides
7 that you received from him?

8 A No, sir. I was an examiner in the Air Force for several
9 years, so I am familiar with examining people on check
10 flights.

11 Q Well, what I am trying to get at: did he apparently do
12 it correctly?

13 A I believe he did exactly what he had to do.

14 Q All right. And I take it that if he did exactly what
15 he had to do, that is what you expected him to do,
16 wouldn't that be it?

17 A Yes, sir. I would say that the checks that I had with
18 Mr. Bell were quite fair, and he was a good examiner.

19 Q Okay. Now, with reference to the day that your
20 employment terminated, that occurred as a result of
21 this matter that you described to us in some detail
22 yesterday in connection with your return flight from
23 Newark to the Broome County airport, would that be
24 right?

25 A Yes.

1 Q Now, that day, without going into all of the details of
2 it again, that day, Mr. Lamos, you were flying a Metro
3 plane, were you?

4 A Yes, sir.

5 Q And a Metro plane accommodates how many passengers?

6 A Nineteen.

7 Q Nineteen?

8 A Yes, sir.

9 Q And was your trip that day a trip from Binghamton to
10 Newark, New Jersey?

11 A No, it was not.

12 Q What was it?

13 A It was a combined flight from Binghamton to White Plains,
14 to Newark, and then return back to Binghamton and
15 Elmira. The last leg of the flight was Elmira.

16 Q You proceeded from Binghamton to White Plains, and then
17 to Newark, and your return was directly to Binghamton?

18 A Yes, sir.

19 Q And I understand it, when you landed the plane at Bingham-
20 ton, you had one passenger left, did you?

21 A Yes, sir.

22 Q And you were flying in a nineteen passenger plane to
23 Binghamton?

24 A Yes, sir.

25 Q And when the passengers got off the plane, those that

1 were to get off at Binghamton, there was only the one
2 passenger, that it was necessary for you to transport
3 from Binghamton to Elmira?

4 A That is right, sir.

5 Q And I take it that that would indicate that there were
6 no tickets sold, or no passengers available seeking to
7 fly from Binghamton to Elmira?

8 A Not that I was aware of, no.

9 Q And wasn't it customary, under circumstances such as
10 that, to make that trip from Binghamton to Elmira in
11 a smaller plane?

12 A Yes, sir.

13 Q And that was the company rule, or policy, was it?

14 A No, not necessarily. That depended on the loads, and
15 it was strictly at the company's discretion, and not
16 policy.

17 Q Well, discretion, and I think that perhaps that it a
18 better word for it?

19 A Yes.

20 Q But the distance between Binghamton and Elmira is what;
21 forty or fifty miles?

22 A Fifty-five miles, about.

23 Q And in this instance, you had only the one passenger that
24 was going?

25 A Yes.

1 Q So that the ordinary company policy would be that they
2 would use a smaller plane for that purpose, wasn't it?

3 A That generally is at the discretion of the company,
4 whatever they wanted to do.

5 Q But was it their usual practice to do that?

6 A Not all of the time. It varied.

7 Q What?

8 A It varied. There was never any consistency to it. It
9 was strictly at the discretion of the scheduling people.

10 Q I have been provided, Mr. Lamos, with an interview that
11 you had with a representative of the F.B.I., apparently
12 on January 2nd, 1975. Did you have an opportunity
13 to read this over before you testified here today?

14 A Yes, sir.

15 Q All right. Did you say in that interview that it was
16 normal company procedure at Binghamton, New York, if
17 the load warranted it, to reassign a smaller aircraft
18 to the flight? This is referring now to a flight from
19 Binghamton into Elmira?

20 A Yes, sir.

21 Q So that was the normal company procedure then, was it?

22 A No, sir. If the load warranted. And that means at the
23 discretion, and I believe that that is the way I just
24 testified to you.

25 Q That is the way you say it. Unless you had no passengers

1 at all, and you could not have no passengers at all,
2 I would presume?

3 A But the problem, sir, was the flight back out of Elmira.
4 That wasn't the only leg that that plane was going to be
5 used on. So the one passenger has nothing to do with it,
6 per se. One passenger is the same as fifteen.

7 Q I am not going to try and argue that out with you.

8 A That is all right.

9 Q I am simply asking you if you don't agree, as you stated
10 to this F.B.I. man, that it was normal company procedure
11 at Binghamton, if the load warranted it, to reassign a
12 smaller aircraft to the flight?

13 A Yes, sir, and they did that frequently at their
14 discretion, as I have previously testified to.

15 Q And you had that experience on numerous occasions before
16 had you not?

17 A Yes, sir, and on numerous occasions before, I have also
18 flown the same airplane through with as few passengers.

19 Q But you had had, hadn't you, the experience, previously,
20 of coming into Binghamton on a larger plane?

21 A Yes, sir.

22 Q And being assigned to a smaller plane to get that fifty
23 miles with whatever passengers you had, if the smaller
24 plane would accommodate them?

25 A At the discretion of the company, yes, sir.

1 Q Yes. Well, my point is that you didn't feel that it
2 was up to you, you agree that it was up to the company
3 to decide that, would that be right?

4 A The change of airplanes, I don't believe -- I am not
5 sure exactly what your line of questioning is, sir, but
6 the change, I don't believe is the problem. The change
7 of airplanes, we agreed to that yesterday. The change
8 of airplanes, and I say in my statement there, and I
9 said yesterday that a fifteen minute turn around is no
10 problem. That is quite simple to do because I taxi my
11 nineteen passengers over to the hangar and pick up --

12 Q (Interrupting) I can only ask you but one thing at a
13 time.

14 A Excuse me.

15 Q I will get to all of that.

16 A Very well, thank you.

17 Q But I am doing it the best I can here.

18 A Yes, sir.

19 Q And if it is not so that the jury will understand this

20 A Okay.

21 Q -- because the jury are strangers to it somewhat, like
22 I am, and for them to understand it, it is not unusual
23 or was not unusual for the company to designate a
24 smaller plane for that short trip?

25 A Yes, sir, that is true.

1 Q Especially if you had only one passenger, correct?

2 A Well, the one passenger didn't have anything to do with
3 it. If I had less than eight, they could do it that way

4 Q Because the plane that was designated for the trip --

5 A Yes.

6 Q -- was the one that you refused to test fly, correct?

7 A Yes, sir, that is the one that was designated for it.

8 Q Now, that plane was what type of plane?

9 A It was a Dumont. It is a twin-engine Beech, and it is
10 a nine-passenger plane.

11 Q And that would accommodate nine passengers?

12 A That's right.

13 Q Now, you were requested, if I understand your testimony,
14 to test fly that plane before it was used in the
15 continuance of your flight to Elmira, right?

16 A Yes, sir.

17 Q And were you informed that engine work had been done
18 on that plane?

19 A I was informed that maintenance had been accomplished.
20 I didn't know what.

21 Q And were you also informed by the operations division
22 that that plane had been assigned for you to complete
23 the trip?

24 A When I called operations, -- our normal procedure was to
25 call operations before we got to Binghamton, and about

1 fifteen minutes out.

2 Q I don't care where you did it, but at some point --

3 THE COURT: (Interrupting) Please, please,
4 you are both talking at the same time.

5 Wait until Mr. Shanahan finishes a
6 question, and then you can answer it.

7 THE WITNESS: All right, sir.

8 THE COURT: And confine your answers to
9 the questions.

10 Start again.

11 BY MR. SHANAHAN:

12 Q Were you advised, at some point, by operations, that you
13 were assigned to this Dumont airplane, or that the
14 Dumont plane was assigned, if that is the way to say it,
15 to the trip from Binghamton to Elmira?

16 A Yes, and in the same conversation they said it had to
17 be test flown before.

18 Q Now, I am going to come to that so just wait, if you
19 will, until I ask you about it. Now, as you landed,
20 then, in Binghamton, you were aware that you were,
21 number one, to complete your trip in a different plane?

22 A Yes, sir.

23 Q And you were aware that you were going to be asked, or
24 you had already been asked, to test fly a plane?

25 A Yes, sir.

1 Q Now, so that we will understand it: if you had to
2 test fly that plane, what would that have amounted to?
3 What would you have been required to do?

4 A Well, taxi the airplane -- I had to go to the hangar and
5 check with the maintenance people and see what type of
6 a test flight they wanted flown. I had to start up the
7 other airplane and taxi it out with the 985 engines in
8 full feather, and it takes several minutes to warm up
9 before you take off, and go through the check, and they
10 wanted me to perform that and then taxi back into
11 maintenance, and then have maintenance clear it, and
12 then assuming the airplane passed the flight check, and
13 have them sign out the paperwork, and taxi back out.

14 Q As far as being in the air was concerned, Mr. Lamos, what
15 distance would you have had to travel?

16 A That has nothing to do with it. The time would be the
17 problem. You can do it in the local area.

18 Q You just fly it around the airport, wouldn't you?

19 A Not necessarily. I don't know what checks had to be
20 performed.

21 Q Did you ask what checks had to be performed?

22 A Yes, s' , and it would be not in the traffic pattern.
23 It would be outside of the traffic pattern.

24 Q Well, did you first of all, did you ask what checks were
25 to be performed?

1 A Yes, sir.

2 Q And what were you told?

3 A They had an engine problem, and it had to be checked
4 out.

5 Q Well, did that indicate to you that you would have to do
6 more than just fly it around the perimeter of the airport?

7 A Yes, sir, I don't perform any checks of that type at
8 low altitude. I value my skin too highly. I go outside
9 of the local area to do it.

10 Q Was it company policy that you were aware of that any
11 plane that had been in for repairs should be test
12 flown before passengers were carried on that plane?

13 A That is not company policy. That is an FAA requirement.

14 Q Well, FAA does require a check flight after major repairs,
15 isn't that so?

16 A That is correct.

17 Q Did you know, specifically, what the repairs had been
18 on this plane, as to whether they would be classified
19 as major or not?

20 A If it had anything to do with engine or split control,
21 it was major repair.

22 Q And so then, it was a Federal Aviation Agency requirement
23 you say?

24 A Correct.

25 Q That that plane be checked?

1 A Yes.

2 Q Before passengers could be transported in it?

3 A Yes, sir.

4 Q And that, of course, is a safety measure, right?

5 A Yes.

6 Q Okay. Now, when it came to that point, you rebelled
7 against testing that plane, would that be it?

8 A No, I rebelled against the delay.

9 Q You rebelled against the delay?

10 A Yes, sir.

11 Q And it was your position that, if I understood you
12 correctly, that somebody else should have tested that
13 plane before you got in?

14 A Yes, sir.

15 Q Weren't you told that there had been nobody available
16 to do it?

17 A No, sir, that is not true.

18 Q Weren't you told that the engine work had just shortly
19 before your arrival been completed?

20 A No, sir, that is not true.

21 Q That is not true?

22 A No, sir.

23 Q But in any event, you did refuse to check fly it?

24 A Yes, sir, I refused because of the delay.

25 Q Now, Mr. Lamos, you got pretty mad about that whole

1 situation that day, didn't you?

2 A Yes, sir.

3 Q And did you have some talk with the people in operations,
4 yourself?

5 A Yes, sir.

6 Q And in the course of that talk -- well, let me ask you.
7 Mrs. Winston is employed there at the company, is she
8 not?

9 A Yes, sir.

10 Q And you had some talk with her that day, did you?

11 A Well, Mr. Winston was not available.

12 Q But you did talk to Mrs. Winston?

13 A Yes, sir.

14 Q And did you tell her that she was a liar, and she had
15 been a liar all her life?

16 A No, sir.

17 Q Well, didn't you say that to her, and then come back
18 the next day and apologize for having said it?

19 A I made a statement that when she told me that I had quit,
20 I said, 'No, I did not quit.'

21 Q Was there something about calling her a liar?

22 A I told her that she had made a mistake about what I said.
23 I don't recall calling her a liar.

24 Q You didn't say she was a liar?

25 A No.

1 Q And you did come back the next day, or some time later,
2 to apologize for what you did say?

3 A Yes, sir, I would do that with anybody that I get angry
4 about.

5 Q I am not being critical for your doing it. I admire you
6 for doing it.

7 A I would do that with Mr. Winston, as well, yes, sir.

8 Q All right. Now, that ended by your refusing to test
9 fly the airplane?

10 A Yes, sir.

11 Q And did you take any airplane from the office or from
12 the Broome County airport to take the passenger to
13 Elmira?

14 A No, sir, I did not.

15 Q Was it necessary for them to obtain another pilot to
16 accommodate that passenger?

17 A I had been fired, sir.

18 Q I beg your pardon?

19 A I had been fired.

20 Q You say that you didn't quit, you had been fired?

21 A No, sir, I had been fired.

22 Q And all of this resulted, or all of this came out of
23 your refusal, under the circumstances that you have
24 described, to test fly that plane?

25 A Yes, sir.

1 Q Because you weren't satisfied with the way they were
2 running the company in that regard, would that be it?

3 A I was dissatisfied with the delay that I was to have to
4 take.

5 Q Now, at that time, were you based in Elmira?

6 A Yes, sir.

7 Q And you were, at that time, living in Elmira?

8 A In Sayer, Pennsylvania.

9 Q Is that fairly close to Elmira?

10 A About twenty-five miles.

11 Q Twenty-five miles?

12 A Yes, sir.

13 Q And you returned, I presume, to your home that day, did
14 you?

15 A Later that day, yes, sir.

16 Q Well, didn't you refuse even to ride on the airplane
17 and say that you were going to get your wife to come
18 and get you?

19 A No, sir.

20 Q How did you get home?

21 A I got a rental car to go home.

22 Q I see. Now, in the course of this discussion about
23 not flying the plane that same day, you finally did
24 get to see Mr. Winston? He was occupied, I think you
25 said, or you weren't able to see him immediately?

1 A Not immediately.

2 Q I beg your pardon?

3 A I didn't see him immediately. He did come out later.

4 Q Mr. Bell was not available?

5 A Mr. Bell was not involved in this in any way.

6 Q I am sorry, I didn't get what you said?

7 A Mr. Bell was not involved in this in any way.

8 Q No, I realize that. But my question was: you did

9 eventually talk to Mr. Winston, as well?

10 A Yes, sir.

11 Q And he asked you, did he, if you were refusing to fly --

12 to test fly the airplane?

13 A Yes, sir.

14 Q And did you tell him that you were refusing to do it?

15 A I asked him specifically why it wasn't test flown

16 before I got back there from the flight, since the

17 maintenance had been done before, and he said, 'I don't

18 have to answer that question.' And I said, 'No, sir,

19 you don't have to answer me at all.'

20 Q What I asked you was, did you tell him that you were

21 refusing to test fly the plane?

22 A I don't know whether I did, specifically or not. I

23 know that he knew and was aware of the goings on.

24 Q Just one other thing, Mr. Lamos, during your employment

25 with Commuter, do you remember when there was some

1 discussion about Mr. Josephson being transferred from
2 Binghamton to Elmira?

3 A I remember him being considered for it, but I don't
4 know what the conditions were.

5 Q Did you ever express yourself at all on the subject of
6 Mr. Josephson's being transferred from the Binghamton
7 to the Elmira branch of the operation?

8 MR. CHALENSKI: Objection, Your Honor.
9 It is beyond the scope of the direct.

10 THE COURT: Overruled.

11 BY MR. SHANAHAN:

12 Q The Court says you may answer.

13 A I don't remember expressing myself, specifically about
14 it, no, I don't. I really don't.

15 Q Do you remember specifically stating that you did not
16 want Josephson to be transferred over to Elmira?

17 A I don't think I was given that option, as I recall.

18 Q Well, did you give an opinion or not or did you express
19 yourself in that fashion, do you recall?

20 A Not that way. No, I expressed interest in two other
21 co-pilots, but I don't think specifically anything about
22 Mr. Josephson. I don't recall.

23 Q You lowered your voice and I couldn't get it.

24 A I don't recall saying anything at all about Mr.
25 Josephson.

1 MR. SHANAHAN: I think that that is all.

2 RE-DIRECT EXAMINATION

3 BY MR. CHALENSKI:

4 Q Regarding the in-route check with the Federal Aviation
5 Administration, when you are going from the point of
6 origin to the point of destination, this is on a regular
7 commercial run, or a regularly scheduled run of the
8 airline?

9 A Yes, it is, with passengers on board.

10 Q And as far as you are concerned, the FAA agent -- strike
11 that, the FAA examiner sits in the cockpit with the
12 pilot and the co-pilot?

13 A As close as he can get to the cockpit in our airplanes,
14 yes, sir. He is in a position to observe what we are
15 doing.

16 Q And he doesn't give you any directions as to what to do
17 or what not to do, and he merely observes?

18 A Yes, sir, that is all.

19 Q And if you take a route check one day, I assume that
20 the FAA examiner makes some report regarding that, is
21 that correct?

22 A Yes, sir.

23 Q And the next day you take a check ride and you fail the
24 check ride, and does that route check have any
25 significance on whether you are permitted to fly or not?

1 A No, sir, because the check ride -- the last check ride
2 determines whether you can fly or not, and not any other
3 ride.

4 Q Can you take a route check without having a current
5 check ride, having passed a check ride currently?

6 A No, sir, you cannot.

7 Q Because you are not allowed to fly the plane in the
8 first place, because you failed a check ride and you
9 can't take a route check?

10 A No, sir, you can't.

11 Q How long were you at Commuter Airlines?

12 A It worked out to be fifty weeks.

13 Q And how many times -- you testified that you performed
14 at about five check rides?

15 A Yes, sir, approximately.

16 Q And none of those were by the FAA examiner?

17 A No, sir.

18 Q Do you know how often the FAA examiner tested the
19 pilots of Broome County Aviation?

20 A They came around quite frequently. As far as I know,
21 they selected the people that they wanted to fly with.
22 You would have to check company records to find out how
23 often they did. I was not always around or available
24 when they were there.

25 Q When they were there, they did not check all of the

1 pilots, did they?

2 A No, sir, they did not.

3 Q Following your refusal to test fly the Dumont, what
4 plane actually did carry that passenger to Elmira?

5 A The rental car I had was turned in at Elmira Airport,
6 and when I arrived there, it was about two and a half
7 hours after my --

8 MR. SHANAHAN: I would have to object
9 to this. I don't have any objection to his saying --

10 MR. CHALENSKI: (Interrupting) I will
11 rephrase the question.

12 BY MR. CHALENSKI:

13 Q Do you know what plane transported the passenger that
14 you had, to Elmira, following your refusal to make that
15 flight?

16 A Yes, sir, it was a six passenger Navajo.

17 Q Smaller than the Dumont?

18 A Yes, smaller than the Dumont.

19 Q How much overall time does it take to test fly -- strike
20 that. Under the circumstances under which you would
21 have had to test flown the plane, how long would it
22 take you to perform that test ride?

23 A From the time I was notified and was able to get to
24 talk with maintenance, and everything that I explained
25 to Mr. Shanahan, it would take about forty-five minutes

1 to do a thorough job, including ground time. That is
2 not flight time. That is including ground time.

3 Q That includes both flight and ground time?

4 A Yes, sir.

5 Q Following your termination of employment with Commuter,
6 were you ever recalled?

7 A No, sir.

8 Q Did you leave a forwarding address, where you moved?

9 A Yes, sir, I stayed in the local area for quite a while.

10 MR. CHALENSKI: Thank you.

11 RE-CROSS EXAMINATION

12 BY MR. RICHARDS:

13 Q Now, how long did your argument with Mr. and Mrs. Winston
14 last?

15 A It was very short.

16 Q Less than five minutes, or what?

17 A Ten, probably.

18 Q One other question: the plane that you were asked to
19 check ride, do you have any information as to whether
20 or not it passed the test flight?

21 A It would be hearsay, sir.

22 Q I am sorry.

23 A The pilot that test flew it said it did not.

24 Q It failed to test fly?

25 A Yes, sir.

1 Q And it was not air worthy for passengers?

2 A Yes, sir.

3 BY MR. SHANAHAN:

4 Q Mr. Lamos, I am not sure I heard you correctly, but
5 how long did you say that the test flight would have
6 taken?

7 A Including ground time and flight time, thirty to forty-
8 five minutes.

9 Q Thirty to forty-five minutes?

10 A Yes, sir, to do a thorough job on an engine problem.

11 Q Well, didn't you express yourself earlier and say that
12 if you had test flown that plane it would have made
13 your passenger thirty minutes late in Elmira?

14 A Yes, sir.

15 Q Well, then, it wouldn't have taken any forty-five
16 minutes to test fly the plane, would it?

17 A Yes, sir. I don't see the discrepancy in your time,
18 sir. I had a fifteen minute turn around.

19 Q I beg your pardon?

20 A I had a fifteen minute turn around, and I was to be
21 airborne, fifteen minutes after I landed. If I test
22 flew the airplane that would have been forty-five
23 minutes.

24 Q And if you didn't take the forty-five minutes, your
25 passenger wouldn't have been that much later?

1 A But that was --

2 Q (Interrupting) Was that passenger somebody that you
3 knew?

4 A No, sir.

5 Q A complete stranger to you?

6 A Yes, sir, he was a customer, sir.

7 MR. SHANAHAN: That is all.

8 MR. CHALENSKI: I have no additional
9 direct examination.

10 THE COURT: You are excused.

11 (Whereupon, the witness was excused.)

12 MR. CHALENSKI: Defense Counsel and the
13 Government have examined Exhibit thirty-three, and
14 redesignated it as thirty-three(a), and we agree that
15 it is in substance a reproduction of what is set forth
16 in the tape, and the Government, at this time, request
17 that the tape be played for the jury.

18 THE COURT: All right.

19 MR. CHALENSKI: And that copies of the
20 transcript be distributed to the jury for review, while
21 they are listening to the tape.

22 THE COURT: All right.

23 MR. CHALENSKI: May I leave the room for
24 a second to get the agent?

25 THE COURT: Yes, sir.

1 AGENT CHERIGO: If I may have your
2 attention, if you look at the bottom of your headsets,
3 you will see a round switch on the side with a little
4 black marker on it, and turn it up to halfway. That is
5 your volume control. I will play a test tape for a minute,
6 and see that everybody is receiving.

7 (Earphones were distributed to members
8 of the jury, the Court, and the Court Reporter. After
9 a test tape was played, the exhibit was played. In
10 addition, a type-written transcript of the tape was
11 distributed to the Court, the jury, and the Court
12 Reporter. The following is a transcript of the tape,
13 compared with the actual playing of the tape by the
14 Court Reporter, and is as accurate as possible, due to
15 difficulties on the tape.)

16 TRANSCRIPT, TAPE OF MEETING OF OCTOBER 5, 1974

17 VOICE NO. 1

18 (JERRY WINSTON): Okay, we will start
19 the meeting then.

20 I think you are all probably aware of or
21 have guessed what the meeting is about, about this union
22 problem which we, call it and, uh, I got word sometime this
23 week and, uh, there was an attempt on the union to come in
24 here and that they had approached our people, our pilots
25 and had been talking to them about the advantages of

1 joining the union, the disadvantages of not joining
2 the union, and we felt it is rather important to us
3 and to you, that we discuss it with you and to give you
4 an idea what the implications are, tell you what the
5 differences are between their promises and what they can
6 deliver, how it will affect you and us, and of course,
7 hoping to dissuade anybody from joining their group. We
8 had the same problem four years ago, exactly four years
9 ago, last October 1970, when the union came in here
10 trying to persuade the pilots that -- can I help you,
11 sir, we are trying to conduct a meeting.

12 VOICE NO. 2

13 (UNKNOWN MALE): I know you are, sir,
14 I'm sorry to bother you but they claim they left a
15 package here, left it right there on the desk, it is
16 not a very big package, (unintelligible).

17 VOICE NO. 3

18 (UNKNOWN MALE): Nothing here.

19 (Unintelligible). I B M Endicott.

20 VOICE NO. 1

21 (JERRY WINSTON): We had the same problem
22 four years ago and the pilots at that time were per-
23 suaded to send in as the union is doing today and I
24 think fortunately for the pilots and for our organization
25 the pilots voted against it. The lots of promises that
the union was going to do all sorts of things for them

1 and as I understand it even those they persuaded, they
2 weren't successful here, and those they didn't persuade
3 paid a lot of dues, and I take the practice at hand
4 and the success of the operation we are concerned with
5 and now I understand that that union is bankrupt and out.
6 The promises they make I think you better be extremely
7 cautious of them, you have to remember what their
8 intentions are, they want to get in here and they want
9 to collect dues, they are in business, they earn good
10 salaries and their interest is to get in here and once
11 they are in here they will continue to collect dues
12 whether they will do anything for you or not just
13 because they are in here doesn't mean that they can force
14 the company to give you all sorts of (unintelligible).
15 In short, they may be able to call a strike, but it
16 will mean that you will be without work, it will mean
17 that we do not have to can rehire other people, it
18 will mean that you will be without salary and they
19 don't guarantee you any result, don't have to hire you
20 back after the strike, a strike is the same as quitting.
21 Take a look at the pilots four years ago, and they
22 were faced with the same thing and I had a similar
23 talk with them and said do you need a union, have you
24 been able to negotiate with management here, with new
25 persons calling or call group meetings.

1 VOICE NO. 2

2 (UNKNOWN MALE): I'm sorry to bother you,
3 (unintelligible). They say they left it on the table
4 over there.

5 VOICE NO.1

6 (JERRY WINSTON): So the pilots at that
7 time we advised, we told them, just take a look at how
8 we have been operating and has there been any time that
9 they have not been able to negotiate either in a group
10 and you know, since then, after the pilots voted the
11 union out, you have been able to negotiate at many co-
12 pilot meetings, captains meetings, and many group
13 meetings, you have had differences and if they were
14 reasonable and we always took care of it and it has been
15 very rare that anybody had to be turned down.

16 The co-pilots in this company demonstrate
17 that we can do more for you than a union can. Now I
18 will start off by showing you from that period four
19 years ago when the union tried to get in here and
20 weren't successful what has been done for you, take
21 your own particular group, the co-pilots. Since then,
22 we felt we've done quite a bit for the co-pilots before
23 that and what have we done since then. Take a look at
24 that pilot's roster now in the meeting we had with the
25 captains earlier today, there were six captains, we
were a lot smaller then, you got to remember in 1970

1 we didn't have any Metros, no Chieftons, we had two
2 Dumonts and that is what we ran our Commuter with
3 and , of course, now, we have our Dumonts, Chiefton, four
4 Metros, we have grown quite a bit since then, which
5 indicates how progressive we are, and we made jobs for
6 the people because we've grown. As you look at that
7 captains' roster there, Ted Bell was here at the time
8 that the union vote came up, John Herrington was here,
9 Hank Excell, Paul Briggs, Paul Floto, I think that,
10 one, two, three, four, five, six, plus myself were
11 here at that time. The rest of the pilots if you will
12 look under Paul Floto's name there are six new pilots
13 who have come here since then, you got Mike Kleitz,
14 Don Reeve, Jan Solberg, Bill Lamos, Dolan and Puzztai;
15 all are new, six of them. Of that six, five of them
16 came here as co-pilots so we have six new people here
17 and out of the six, five of them came here as co-pilots
18 and they advanced from co-pilot to captain. We didn't
19 need a union to protect those people, they moved in
20 so five out of six pilots captains, additional
21 captains, came out of the co-pilot seats. What
22 protection then does the co-pilots need? What are
23 the unions going to do besides take money from you?
24 Dues. They can't guarantee you anything but promise
25 everything because if they promise you and you get

1 suckered in to bringing them in here from then on they
2 got their dues, there is no way in getting rid of the
3 union, they are here and they are here forever. We
4 dealt with you honestly. If you have a problem, you are
5 able to come and talk with me directly or talk as a
6 group with me directly or talk with Ted Bell and we try
7 to cure any problems. What's going to happen within
8 the union? You will no longer be able to talk with me.
9 It's just for voting as far as the union is concerned.
10 The only way you can talk to management is with a union
11 representative here. And are they going to look after
12 your best interest or are they going to look out for
13 their interest? Their interest is in getting your dues.
14 Now, as I say, we deal with you honestly and we never try
15 to abuse you and you know when you put in for your
16 salary you get your salary every week and it doesn't
17 bounce, checks don't bounce, you don't get a song and
18 dance when you work out your flight pay, you get paid
19 accurately, there is no attempt on us to confuse you
20 or cheat you and so on. Now what is the union going
21 to do when they come in here? They are going to bring
22 their much in with them. If any of you have been at
23 all alert about how unions have worked in the United
24 States and they will take pension plans, and you know,
25 that there are unions in this country have taken pension

1 plans and just completely robbed it. You won't be on
2 our pension plan anymore because that goes out. You
3 will be on the union pension plan. You won't be on
4 our medical plan. You will be on the union's medical
5 plan. We never terrorize anybody or strong-arm anybody
6 but what's going to happen with the unions? All you
7 have to do is read the papers, study the history and so
8 on. There was a time when unions were necessary. I
9 think that they have outlived their usefulness. People
10 today are fairly educated, fairly sophisticated, the
11 benefits that we offer here were offered not demanded.
12 The company came up with the pension plan, and if you
13 don't think that pension plan is valuable, just remember
14 that we just lost unfortunately Bert Moustrum, his wife
15 was not left destitute because the company not only paid
16 for his medical expenses but paid for his funeral
17 expenses. We gave his wife in excess of \$20,000 in
18 cash under the insurance plan. I'm not talking about
19 what it was suppose to do, but I'm talking about what
20 it did already. Over \$20,000 in cash, I think our company
21 is pretty progressive. The same thing with the medical
22 plan. We had a medical plan here when the union tried
23 to get in four years ago and as I say, the pilots voted
24 them out and what have we done with our medical plan
25 since then? We changed it to my knowledge a minimum

1 of three times. Improving it each time so now we have
2 the best, one of the most modern, and best medical
3 plans available. We know each person is covered 100
4 percent for hospital for (quite a period) a much longer
5 period than our previous policy was which is pretty
6 good.

7 You are covered for \$1/4 million per
8 person and that is important. You don't think that it
9 sounds like a fairy tale figure. Talk to two of our line
10 boys who worked with people and didn't have any medical
11 plan and their salaries here are being dunned. We
12 have to deduct 10 percent of their salary every week here
13 and take it to some collection agency because they ran
14 up a medical bill; it wasn't that they squandered money,
15 they couldn't help themselves, they got caught in this
16 thing they ran up a medical bill and we are forced to
17 take off 10 percent of their salaries every week to pay
18 it back to this collection agency because they didn't
19 have a medical plan. Your medical plan doesn't do that.
20 If you should have a serious accident it doesn't have
21 to be a \$1/4 million, but say it's \$100,000. Most
22 medical plans have this major medical which means that
23 the insurance company pays 80 percent and you pay 20
24 percent and if you have a \$100,000 bill you still have
25 to come up with \$20,000 and you can be in the same

1 position as these two line boys are, where your salary
2 is dunned and every day probably for the rest of your
3 life they will be taking off money, 10 percent of
4 your salary to pay back to the collection agency. But
5 in our medical plan, besides all the other good features
6 the most you're liable for is \$400 and I don't think
7 anybody is going to go broke here if you have \$100,000
8 bill and only have to come up with \$400. I think that
9 is pretty good. It was done voluntarily, no one asked
10 for it. That was one of the improvements that we had
11 in the last four years. We are performing. We are
12 taking co-pilots and our of six new captains, five
13 were ex-co-pilots. We are performing. We have improved
14 the benefits here. We have never laid anybody off. Now
15 you know at that time in 1970 the industry was in a real
16 recession, companies were going bankrupt, aviation
17 companies were going bankrupt like crazy, 800 per year
18 out of 12,000, how many were on the verge of bankruptcy?
19 How many cut back? There was a real recession in the
20 industry. But not here at Broome County Aviation, Commuter
21 Airlines. We experienced prosperity. It was all
22 because of our planning that we experienced this and
23 our pilots were not laid off, they were not cut back,
24 they were not made insecure that way. They were given
25 that by the type of management that we have here.

1 What are the unions going to do? They are going to
2 disrupt our operation. I will be in meetings with
3 them constantly and instead of attending to business,
4 I'm screwing around with unions. And don't think that
5 that will be the only union that will come in here.
6 Now, I met Thursday with the largest commuter service
7 in the country, in the world, they are up here too,
8 looking over our operation. That is how progressive we
9 are. They have come to see us; to see how we do it.
10 They got three unions, one for the pilots, one for the
11 mechanics, I didn't ask them who the third one was for,
12 but maybe its the line people, I don't know, and each
13 one is just all looking out for themselves. They could
14 care less about what machine is used, all they want to
15 do is look out for themselves. And everybody is
16 against the company. Now let's face it, your jobs are
17 there, if the company survives; if the company is sick,
18 you're out.

19 Because we will have to cut our lines,
20 lay off pilots, sell off equipment, and that's what
21 they are asking to do to disrupt the organization. So
22 in addition to five out of six co-pilots growing to cap-
23 tains, let's take a look at salaries, and benefits like
24 that. We still have one, the co-pilots' salaries, still
25 have one co-pilot that is here, there are some that have

1 moved up 4 captains. We are looking at co-pilots.
2 We still have one that is here, that is a co-pilot.
3 His salary has grown 35 percent since then. He didn't
4 have to pay union dues and he didn't have to take the
5 guff from some steward who now has got the power and
6 is going to throw his weight around with you, not with
7 me, but with you. An increase of 35 percent in salary
8 and let's take a look at some of the benefits that was
9 not there the last time which was voluntarily offered
10 by the company, not asked for (1) The base pay went up
11 about 20 percent since that time. At that time co-pilots
12 were getting no pay for time over 60 hours and now it's
13 \$2.00 an hour. Co-pilots got nothing for ground time
14 while waiting between flights on commuters, they now
15 get, uh, I'm sorry, on co-pilots ground time they get a
16 dollar and for co-pilots on commuter they now get \$.50,
17 which is all cumulative. At that time we didn't have
18 that but we grew and we can afford it better and these
19 were voluntary things on the part of the company. The
20 co-pilots did not come and ask for it. We said now
21 here is something that is a little more equitable to be
22 a little more palatable to the pilots if they have to
23 wait from say 101 down to 500. We'll pay them per hour
24 on the scheduled basis. (Unintelligible) And as I
25 said done by the company we are really progressing.

1 And here is IBM, which is a tremendous
2 company, I don't have to tell you, a well-known
3 company, a hell of a lot bigger than we are, and our
4 benefits don't vary that much. We have people. We
5 have somebody here who recently lost their husband, who
6 was an IBM employee all his life, and big deal after
7 25 years, he was earning \$13, \$14, \$15 thousand, I don't
8 know, somewhere in that range, after 25 years. Our pilots
9 are here two-three years, our captains, are earning a
10 hell of a lot more than that. And of course, when we
11 came in the Metro program meeting we introduced the co-
12 pilot flight pay. Just as the captains do an propor-
13 tionate rate. He's getting \$75 an hour there plus \$.75
14 an hour there. Voluntary on our part, no one asked
15 for it. That was all voluntary. We said OK. Now you
16 are flying the most sophisticated airplane, a bigger
17 airplane, it generates more money than the Dumonts do
18 or the Navajos do. We should be able to afford to
19 pay more and we know that we can and we felt we could.
20 We voluntarily offered it to you. So I go back again,
21 say in the last four years that we have put our six
22 captains, and five of them are out of the co-pilot
23 ranks. That's our policy. Now one of them we hired
24 direct out of the field. Now we plan to continue with
25 this policy. We at that time, we are flying, as I say,

1 our biggest airplane was the Dumont; it's a yesterday's
2 airplane, pistons, unpressurized, not that fast, doesn't
3 have the modern look of a Metro and so on and since then
4 we brought on four Metros which made up jobs for the co-
5 pilots and captains jobs for the co-pilots because
6 everybody moved up. The captains that were here at that
7 time, were moved from a Dumont to the Metros and the co-
8 pilots moved into the captains jobs. Now do we continue
9 to grow and make captains' jobs available to you or are
10 we going to get stifled when somebody comes along that
11 is a union representative that doesn't know our
12 problems and really could care less and he starts to
13 dictate to me how we are to run the organization and
14 what we're going to do and how we're going to manage
15 it regardless what the economics are of course, we don't
16 have to agree but that will tie me up in meetings so
17 instead of paying attention to growth and putting out
18 more airplanes, we won't.

19 Now, I tell you how we have been affected
20 just with the news of this week that the union's coming
21 in. You are all aware that we bid on Citation, a
22 contract with IBM for a Citation, \$850,000 for an
23 airplane. I don't know if you know anything about
24 economics, we got to go out and borrow it and then we
25 owe it, we got to pay it back and if we don't pay it back

1 thye'll chop our heads off, sell all our airplanes off
2 and we will be out of business. That's the way it
3 works. We have to go out and do that \$850,000. But
4 I can tell you right now with the news now, we put in a
5 bid for it, and they are negotiating with us and they
6 are hard and we have to stick our neck out further and
7 further and I can tell you now, we can pull our neck
8 richgt in and I'm not going to do it. All because of
9 this news here. I'm not going to expand it is fact.
10 I'm not going to buy that Citation, I can't afford to
11 take that risk. Economic risk with an unstable organi-
12 zation internally that will try to dictate the economic
13 policies of the company. Just not going to it. We
14 have to negotiate with the banks to loan us more money
15 to buy another Metro, our Metro means three more
16 captains. Now we take three more captains from the
17 co-pilots, fellows who were co-pilots moved up to cap-
18 tains, someone else has to move up to that position.
19 And according to the way we have been operating in the
20 past, it doesn't have to be our policy, but we have
21 been doing it that way. The likelihood is those three
22 captains are going to move in from the co-pilot ranks
23 or at least most of them will. We have a chance of
24 buying three more Chieftons, I tell you, the way we
25 have a chance to somebody negotiating with us about

1 the three Navajos, which means we will replace them
2 here. But damn it, for the instability, the likelihood
3 is that the Navajos will go but they won't get replaced,
4 because the economic instability caused by this, we are
5 in a tough business. Just look at the rest of the
6 operators. In 1970, there was a two year depression in
7 the aviation industry and they were laying off pilots
8 like crazy. All over the place and we won't do it, we
9 have as I say, we have prosperity here, no one got laid
10 off, everybody grew, we bought more equipment. I would
11 say the company is pretty progressive. What our policy
12 in the future is going to be again depends upon yourselves.
13 I'm telling you that we have good management here, we are
14 looking out for growth. Already, I have indicated now,
15 that we have the chance of converting three Navajos
16 into two Chieftons. We want to order another Metro
17 before the end of the year. It may be our last Metro
18 because I think we are feady for thirty passenger planes.
19 And I think I told you at our meeting of perhaps two
20 or three months ago that Gruman has contacted us and
21 tells us that they have a thirty passenger jet that
22 they are going to market in '76 and we told Mericks
23 (phonetic) and I told you that then about economic
24 instability, we can't plan ahead. We've got to pull our
25 horns in, you would too if you were in my shoes.

1 Here's another situation. I don't think any of you
2 are asleep, you know what's going on in the world.
3 We have an inflation that has run away with the country,
4 it's killing the people inside the country, it's killing
5 the industry inside our country, and we are about ready
6 I feel and also economic and economists in this country
7 feel the same way, we are about ready to plunge into a
8 depression; I'm working on that problem, I'm working
9 on how to keep our company together. Now visualize it.
10 We have three, I mean four more Metros here worth about
11 three million, all of which was borrowed from the banks.
12 The banks have us by the throat. We are paying 13%
13 interest, anybody want to see? I've got the means to
14 show you what the interest rate is. That means we are
15 paying on just those four airplanes at the rate of,
16 approximately \$400,000 a year in interest. Now the
17 union couldn't care less. Just gimme, gimme, gimme.
18 They don't care whether we don't pay our interest, we
19 don't pay the banks, they don't care if we don't pay
20 for teletypes, they don't care if we don't pay for any-
21 thing. And you know what is going to happen in a
22 situation like that? When this depression hits, or if
23 it hits, they will be , we will go down with everybody
24 else. We are not going to be any different. Now let
25 me tell you, I told the pilots this afternoon the

1 same thing, and I'm going to tell you the same thing.
2 We have been in business now thirty-four years,
3 started my own operation right after World War II.
4 At that time, things were pretty tough, we got \$50
5 a week with IOU's, no cash, all IOU's. If you had
6 savings you lived off it. We had other fellows in
7 our company, they were in the same situation as I was,
8 except they had to quit. They ran out of savings, and
9 had to quit. They were out. They were out, I tell you.
10 Out of four or five people, we ended up with two. The
11 only way you could make money in those days was on a GI
12 bill. It was a pretty good deal. We only operated with
13 very few cuts and a GI could get GI training up through
14 the commercial course and up, I can't remember where they
15 could get the instructor course or not, but never the
16 less, I know it was commerical course, it was paid 100%
17 by the VA. And so we taught these people instead of
18 wasting the GI bill, could get something of it, to
19 go get a commercial license and that is what they did.
20 We brought them in but the program was going to end in
21 a few years. That is the way I saw it. That this
22 thing was going to thin out and eventually going to end
23 in at least two years or maybe a little longer. And so
24 we decided to plan for it, looking ahead to what's
25 coming. And what are we doing? We are at a very big

1 airport where no buildings are. Whatever buildings
2 were there we built ourselves. Northeast Airlines
3 had the right into that airport, but they weren't
4 operating. So we contacted Northeast Airlines and
5 said come on in. As our thinking was, if the flight
6 instruction business was going to be over, that the
7 only type of business in the aviation business was
8 primarily charter and I felt if they were going to
9 have an airlines there they were going to have to
10 generate the business and so Parkwood talked with
11 Northeast Airlines, told me to come in, we said we
12 can't come in because we don't have a terminal
13 building. Put up a terminal building for us and we
14 will come in. We can't have our people standing in
15 snow waiting for our flights or sitting in their cars.
16 So we talked with the town fathers, they couldn't care
17 less, all they did was gab, gab, about the thing and
18 time went on and nothing was being done. So we felt
19 so confident in what we were doing, I felt it was so
20 urgent that we do it, that we built our own terminal
21 building with our own money. So we put up our own
22 terminal building and the building is still there,
23 at this airport. We're the only terminal building
24 there, now we got Northeast Airlines to come in there
25 and what did it do for us? We became the largest

1 charter operation in this state. They bought all their
2 fuel from us, in that state. So we sold 90% of all
3 the fuel in this state. And because we were the inter-
4 section on their run between Montreal, Boston and New
5 York, we sold them all their commissary. And so what
6 happened, we were growing like crazy. Because we
7 thought ahead and we put the investment there. And
8 when everybody else was going down like flies, and
9 in our general area, say a 30 to 50 mile radius figure,
10 about 18 people, 18 airports in operation. Because,
11 as you remember in those days, the only operating going
12 up in J3 Cubs put up a wind sock and you've got an
13 airport. They all went out of business but not us.
14 We ended up with all this fuel business, all this
15 charter service and all this commissary service. Now
16 that was thinking ahead.

17 So I started to tell you about the
18 situation four years ago at the time they were trying
19 to get the pilots to vote them in and we were on the
20 verge of a recession. Again, we had planned ahead. So,
21 though the rest of the country were clobbered by this re-
22 cession, in the aviation business, we rose through it
23 and grewed healthier.

24 Another time that we were faced with
25 planning ahead was in 1962 and we said that this

1 charter business is too erratic. You can't invest a
2 lot of money in it because business went up like this
3 and down like that, up like this and down like that.
4 We would fly, Ted was here at the time, and we wouldn't
5 fly for six weeks, no flights come in for six weeks.
6 Then we, feast or famine, one minute we would rush and
7 fly like crazy and then we flew ~~all sorts of~~ hours, there
8 was no regulations of time at that time, duty time ~~and~~
9 so on. Just when your business came in you never said
10 no because the next day you were going to starve. And
11 so we went ahead and took whatever business in but it
12 was a bad type of year, you can't go and get any
13 stability. How many pilots can you hire, because they
14 are going to sit around for six weeks and then you're
15 busy and then what? We had to get stability for the
16 business and so we looked at this commuter, and we
17 studied it, and we flew out to Cleveland and studied
18 Tag Airlines, and we flew out to Pittsfield and studied
19 Yankee Airlines, and we studied the equipment they used
20 and we imitated them. They were all using the De-
21 Havolin Doves and we ordered the De-Havolin Doves and
22 said this is the way to go and in 1964 we were on our
23 way, Commuter Airlines, to start our first operation
24 in Washington. And I know I don't have to tell you that,
25 what the Commuter has done. At that time, we did as

1 much business in a month as we do in one morning here
2 now. So we have grown and we have the stability
3 because of that charter business hasn't changed, you
4 fellows are around. You see lots of days go by with
5 no charters or maybe one and other days are flooded and
6 then it's the same cycle all over again, it doesn't
7 change. But commuter is day in and day out. And so
8 back then we forecasted ahead, and we were the tenth
9 commuter in the United States, tenth or twelfth, in the
10 United States to get started with, we were that early
11 in seeing these things, looking ahead, and here we are,
12 we have a stable business that is growing, and we are
13 growing, and the people inside are growing, those five
14 co-pilots that grew into captains and getting captains'
15 pay. Now we are looking ahead again. I see this
16 depression, as an eminent thing and what do I have to
17 do to plan ahead before it hits us? I am not seeing it
18 today, I've seen it sometime back that it's coming. The
19 problems we have now I've seen as an eminent thing, like
20 this Ecology deal, and they clobbered Detroit, the
21 biggest industry in the United States and if they go
22 down the drain the country is going to do down with
23 them. They're off 40% this year in sales over last
24 year and last year was a short disaster. In Flint,
25 Michigan, where they make the Buicks, they have 30,000

1 people on the unemployment rolls, 30,000. And not
2 just people but 30,000 families. Now with such
3 treacherous times, do we want to shake the ship here?
4 Do we want to see if we can topple it over so we sink?
5 And that's what this thing is. Instability, we can't
6 afford for somebody to come in here and dictate to us
7 what direction we have to take. What economic policies
8 we should do. How to get ourselves out of balance.
9 And if we are out of balance and we can't keep the
10 balance, or we can't demonstrate to them that we have
11 a viable business here, they are not going to loan us
12 a dime. The aviation industry you can check us with
13 any banker is a no no industry. Bankers stay away
14 from them; as far as guidance is concerned, they are
15 unstable but not us, because we have demonstrated with
16 the type of management we have and the policies and the
17 stability that we are the exceptions. And, not only
18 have we demonstrated it, but we have convinced them and
19 they have given us the money to buy these airplanes and
20 are willing to give us more providing the Metros that's
21 already negotiated to buy the Metro and order before
22 the end of the year. And if we might go into a thirty
23 passenger jet, I'm sure it will be there provided that
24 we have internal stability. Okay.

25 Incidentally, what I told the captains

1 earlier was in 1970 we had six captains that are here
2 now, we were pretty small at that time, you understand,
3 and we had two Dumonts, some Navajos and so on, but we
4 didn't have any Metros, or any Chieftons and actually
5 the amount of seats available and the business that
6 is available to us is so much greater, but we had six
7 of them there then that are still here now and their
8 salaries have increased 34.1% per year. They are now
9 earning \$4,000 this is an average \$4,133 a year more
10 than, they were at that time. They didn't need a
11 union, and they didn't have to pay any dues and they
12 didn't have somebody come in here to strong arm them
13 or strong arm us or come in with these to tear our
14 organization apart. They voted the union out and we
15 didn't need anything to persuade them. These are
16 natural growths. As we grew, they grew. We gave them
17 these raises because we can afford it, not because we
18 were forced to do this, now you, some of you have been
19 around long enough to know that even when there is
20 inflation that we voluntarily treated the co-pilots and
21 the captains alike, office girls, everybody, and given
22 you two inflationary raises; that is, raises to offset
23 the inflation. Now we hope to continue to do that as
24 this crazy economy continues. But you know we are
25 pressured too. Don't think that it is just the union.

1 The oil companies have gone up more than 100% on their
2 price. We ordered Glychol here for our de-icing, and
3 that's gone up over 100% over last year. Your fuel
4 has also gone up and everything we touch is that way.
5 We can't become unbalanced with our economics. Now
6 Art 's doing an engine out here and you know, you fellows
7 pretty much have a free run of the place, we don't stop
8 you walking around almost any place here. You can walk
9 in there, and check on it. Between the bulletins and the
10 pieces we've had on that one engine is over \$23,000 in
11 parts not labor. Now we got to have the money for that.
12 We can't tell them don't put the parts on. We got to
13 have money for that and we just can't throw everything
14 on one side and say, well, we don't have any money for
15 parts because Air Research, if anybody knows about it
16 has cut us off as once before because they said we're
17 cutting your credit off because we have a problem that
18 we didn't pay on it, we still haven't paid on it but
19 we're reinstated. But just like that these people will
20 cut you off and then its cash on the line. We have a
21 situation where even Mobil insisted on cash on delivery.
22 And we had to have a check. They called us and said
23 they would be in a 4:00 with the delivery, have a check.
24 You can't get unbalanced. You've got to be balanced
25 or you're going to be in trouble. Now you don't want

1 to fly death traps. We do the best we can to keep your
2 equipment in as excellent shape as possible. I don't go
3 in and tell Art, hey, that turbine wheel that you're pulling
4 off, I don't care if it has nicks, polish it up, put it
5 back on. I know damn well, I know enough about it that
6 the thing is unbalanced. And I know very well it's
7 weaker and can break apart and disintegrate and take
8 the whole engine with it and I don't tell him to do
9 that, but other places they would. But I am also not
10 forced to do that, because our business is balanced.
11 The economics is balanced. We have never been forced
12 to keep our business out of balance. And we don't want
13 to start now because if you do we're going to interrupt
14 the economics, the banks will cut us off, we will have
15 to cut our office down, and also, it's a severe thing.
16 Now, there are other aviation operations, commuter
17 operations that are meaningless. Some of them are a
18 lot bigger than us. All you have to do is take a look
19 around at Broome County and see the commuters here at
20 Broome County. (Unintelligible). Who is flying an
21 \$800,000 Metro? Nobody, they can't afford it.
22 They will never be able to afford it.

23 This outfit that was round here looking
24 at our operations really are looking at Metros. But
25 when they talk to me, they are talking about used Twin

1 Otters because they are getting used Twin Otters at
2 200,000 and (unintelligible) was 800,000. They can't
3 afford it. They've got three unions. And all three
4 unions are fighting the middle. Tearing the organization
5 and they have all they can do to keep the body together.

6 Do we need a union? I don't think so.
7 Now they do promise you all sorts of things; all they
8 want to do is get in and once they are in, you'll never
9 get rid of them. If you are unhappy with what they do,
10 that's too bad. I don't have to tell you about union
11 corruption. Read it in the newspapers. I don't have
12 to tell you that you have been treated fairly and
13 honestly and we never give you a story. What do
14 you want to trade off? All right.

15 I don't want to drag this meeting on
16 longer than I have to. I hope that we have presented
17 our position to you to know that if you're going anywhere,
18 you will go with us, the management. With the intelli-
19 gent management that we have, with the impression that we
20 have. We are one of the most progressive, most modern
21 operations in the country. You know that we have been
22 written up in two aviation magazines just this month
23 because our operation is so out (unintelligible). So
24 don't regress, don't rock the ship, keep us balanced.
25 You are not going to get security with the union.

1 You're liable to get a lot of problems. Your interests
2 and our interests are together. You want to grow,
3 we grow and we can't grow unless you grow. We have
4 demonstrated this. If at no other time within the
5 last four years (unintelligible). So we hope that
6 you will understand and hope that you won't (unintelli-
7 gible), just keep in growing, keep advancing and see if
8 the present management operating the way it is, and has
9 been, will keep us out of trouble and keep the organi-
10 zation growing to move up and advance. And again, we
11 can do it. I want to read a thing I read to the captains
12 earlier. This paper was clipped out four years ago,
13 this was read to the pilots four years ago at that time.
14 This was my statement to the. I want you to see if what
15 I said is true today or am I giving you alot of bull.
16 So I'll read it to you:

17 Many questions about the pilots' union
18 asked by other companies I thought it would be clear,
19 I thought it would clear the air, if we gathered to
20 hear the questions, the answers and then if you want,
21 just generally discuss the issues for a while. I am
22 going to pick questions and answers for two reasons:
23 one, we don't want anyone to say anything wrong, and
24 two, we want you to know the source of our position.
25 We also think that unionizing is serious business.

1 It is going to have effects on both of us. Were you
2 to make (unintelligible) reason you should know our
3 reasons as well as the union's position. One, (unintelli-
4 gible) unions if fulfilled could have adverse (unintelli-
5 gible) on our business, we could become noncompetitive
6 (unintelligible). These (unintelligible) will affect
7 you. Loss of business means loss of jobs. If the
8 union and you are unable to agree it may end up in a
9 strike. It will cost you money as well as us. Part of
10 our policy is importance. The union can cost you a lot
11 of money. (Unintelligible) and they'll reduce the co-
12 pilot to \$120 a week, four years ago. You don't have
13 to bother with initiation fees, strike funds, special
14 assessments and fines. All possible costs and now
15 or sometime in the future, if we thought you'd really
16 be getting something for your money other than glittering
17 promises, we wouldn't say anything. But if you find
18 and you are spending your money for nothing. You're
19 going to be unhappy and if you're unhappy, we are
20 affected. We do not think these possibilities are in
21 the best interest of us all. Two, what would happen
22 if I don't vote for the union? (Unintelligible).
23 The answer to this question is simple. The law
24 specifically says that you have a right for a union.
25 The law is just as specific in saying that you have

1 the right to vote against the union and for your
2 company. Even if you have signed a card, let me
3 repeat that, you can vote no even if you have signed
4 the card. Three, will my ballot be absolutely secret,
5 will anyone know how I voted? The answer: the United
6 States Government will have full supervision while
7 the balloting is going on. And will protect you from
8 interference. Prying or threats by anybody. Your
9 ballot will be absolutely secret. The ballots will not
10 bear any names, numbers, or other marks so that it may
11 be identified. The only mark on the ballot will be the
12 "X" that you make, a long-hand figure. Four, do you
13 need an outside organization and do you need to pay
14 dues to retain the rights and benefits you now have?
15 No. We have no intention whatsoever of abandoning the
16 policies we instituted for our rights and benefits. We
17 done what we done because we thought it fair, just, and
18 proper. We don't intend to become unfair, unjust or
19 improper because of a union. Five, if the union should
20 win the election, will the employees have to go on strike?
21 Answer: the (unintelligible) reasonable or unreasonable
22 demand that unions always (unintelligible).

23 VOICE NO. 4

24 (THEODORE BELL): Each and everyone of
25 you have benefitted by that policy. And that practice
and that effort that has been put forward. Now, the

1 longer you've been here the more you've benefitted by
2 my individual philosophy on all of these occasions here.
3 People who know that I have bent policies, I have bent
4 rules, I have done that for the, because I had faith
5 in them as people and professionals and because I
6 believed in it and I still believe in them but we've
7 got this thing coming up and I am sincerely expecting
8 your support. You're going to get a ballot and it's
9 not going to read that way but there is going to be
10 two people running, one of them is Jimmy Hoffa and the
11 other is me, and I am asking you for my support and it's
12 up to you, the decision is with you. If you have
13 appreciated anything, I have done for you or everything
14 I have done for you, I am asking for that support now.
15 Thanks a lot for your time. Okay, I guess I'll --

16 VOICE NO. 1

17 (JERRY WINSTON): Remember again, that
18 pilots four years ago were faced with the same problem.
19 They voted the union out, and they haven't been sorry.
20 They've grown, the company has grown, they've built their
21 security with themselves and you will do the same thing.
22 The same thing that has been done four years ago. Okay.
23 No questions? Now, probably sometime between now and
24 election time I will ask to mee with all of you
25 individually because I know that sometimes there is a
reluctance to speak in a group, and so at that time, if

1 it becomes necessary, I hope it doesn't become
2 necessary but if it becomes necessary, you'll have
3 another chance.

4 Thanks a lot.'

5 THE COURT: Now, we will break for our
6 luncheon recess. Do not talk about the case.

7 (Whereupon, the Jury was excused.)

8 THE CLERK: Court stands in recess
9 until two p.m.

10 (Whereupon, after the luncheon recess,
11 the proceedings were resumed as follows.)

12 MR. CHALENSKI: Government calls Michael
13 Kleitz.

14 M I C H A E L K L E I T Z

15 Called as a witness, being first duly sworn, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. CHALENSKI:

19 Q Mr. Kleitz, where do you reside?

20 A 109 Traffic Road in Binghamton, New York.

21 Q And what is your occupation?

22 A I am a captain for Commuter Airlines.

23 Q And how long have you been so employed?

24 A Since June of 1970.

25 Q Up until the present?

- 1 A Yes, sir.
- 2 Q Were you present at a meeting with employees of the
3 Defendant at the Holiday Inn, Vestal Parkway, Vestal,
4 New York, on October 2nd, 1974?
- 5 A Yes, sir, I was.
- 6 Q Do you recall who else was present at that meeting?
- 7 A Yes, sir. Just about the entire staff of pilots, except
8 for one or two of the Elmira pilots.
- 9 Q And who do you recall not being present?
- 10 A Jan Solberg, I don't believe was there, nor was Mr.
11 Reeve; Don Reeve.
- 12 Q Do you recall Alexander Calder being there?
- 13 A Yes, sir, yes.
- 14 Q And do you recall John Herrington being there?
- 15 A Yes, sir.
- 16 Q And Mike Baan?
- 17 A Yes.
- 18 Q And Ira Josephson?
- 19 A Yes, sir.
- 20 Q And Robert Slough?
- 21 A Yes, sir.
- 22 Q And others?
- 23 A And others.
- 24 Q And do you recall Alex Calder addressing that group?
- 25 A Yes, sir, I do.

1 Q And do you recall, during the course of his address,
2 Mr. Calder mentioning anyone by name?

3 A Yes, sir, I do. Mr. Josephson, and Mr. Slough.

4 Q And in what context did he mention their names?

5 A He thanked them for inviting Mr. Calder to the meeting.

6 Q Now, following that meeting, Mr. Kleitz, did you have
7 occasion to attend a meeting of the pilots of Commuter
8 Airlines at which Mr. Winston and Mr. Bell spoke?

9 A Yes, sir, I was.

10 Q And what date did that meeting take place?

11 A I don't remember the date, sir.

12 Q Do you recall on what day of the week it was held?

13 A Saturday.

14 Q And how soon after the meeting of the employees at the
15 Holiday Inn?

16 A Oh, maybe a week or two.

17 Q Now, was there a meeting of the co-pilots also held on
18 that day?

19 A Yes, sir, right after the captains' meeting.

20 Q So this was not the same meeting as the co-pilots' that
21 you are talking about?

22 A No, sir, it wasn't.

23 Q Were you present at the co-pilots' meeting?

24 A No, sir.

25 Q Do you have any knowledge of what was said at the co-

1 pilots' meeting?

2 A Just hearsay.

3 Q Now, with reference to the captains' meeting which you
4 attended, did the Defendant, Winston, speak to the
5 captains'?

6 A Yes, sir, he did.

7 Q And do you recall what he said?

8 A Oh, he talked quite a bit about the airline, how it
9 had grown, where it was going, and how the equipment
10 had improved over the years, how we didn't need a union,
11 the company provided benefits, that we could always go
12 into his office if we wanted to talk.

13 Q Did he say anything about what he would do if the union
14 came in?

15 A He said that he didn't really need to put up with it,
16 put up with the union, that he had made his money, made
17 money, and he had enough money to just sell the business
18 and retire.

19 Q Did he say anything else at that meeting?

20 A I can't remember anything specifically.

21 Q Did the Defendant, Bell, speak at that meeting?

22 A Yes, sir, he did.

23 Q And do you recall what Defendant Bell said?

24 A He mentioned that we had all had a good relationship
25 with him over the years, that at times, things were

1 bad, and we had bad days, those were more or less the
2 words I remember, and they were, 'We have all had bad
3 days but we won't have them anymore.'

4 Q Do you recall anything else?

5 A No, sir, I don't. I do remember something else. Just
6 as he was finishing, there was something about you are
7 either voting for Jimmy Hoffa, or you are voting for me.
8 I don't remember the exact words.

9 Q Did he say anything in relation to bad days?

10 A Yes, sir. He said that we all have bad days, but we
11 won't have them anymore.

12 Q Was it understood at that meeting what he was talking about
13 by bad days?

14 MR. SHANAHAN: I object to what his
15 understanding was.

16 THE COURT: Sustained.

17 BY MR. CHALENSKI:

18 Q Do you know what he meant by bad days?

19 MR. SHANAHAN: I object to that.

20 THE COURT: Sustained.

21 BY MR. CHALENSKI:

22 Q Did he say on what occasions you had had bad days before?

23 A No, sir, he didn't.

24 Q Did he say in what context you had had bad days?

25 A No, sir, he didn't.

1 Q Do you recall what your salary was at that time?

2 MR. SHANAHAN: I object to that, as
3 immaterial.

4 THE COURT: I do not see any materiality.

5 MR. CHALENSKI: In the meeting that
6 afternoon, which is on record, the Defendant Winston told
7 the co-pilots what the captains were making. And Mr.
8 Kleitz was a captain at that time, and was for two or
9 three years.

10 THE COURT: Yes, overruled.

11 MR. SHANAHAN: Pardon me, but I don't
12 think that that is what the tape indicates. The tape
13 indicated the increase --

14 THE COURT: (Interrupting) But I think
15 that is within the scope. Go ahead. What were you
16 making at that time?

17 THE WITNESS: My salary was about \$9,500.00
18 a year, and overtime was another \$3,000.00 a year.

19 BY MR. CHALENSKI:

20 Q And Mr. Winston said that the employees for I B M were
21 making thirteen and fourteen?

22 MR. RICHARDS: Objection. The witness
23 said he didn't attend that meeting.

24 THE COURT: Overruled.

25 BY MR. CHALENSKI:

1 Q Mr. Winston said we have somebody here who recently
2 lost her husband who was an I B M employee all of his
3 life, and something about thirteen thousand or fifteen
4 thousand, and they worked in the range of twenty-five
5 years, and Mr. Winston said , ' Our pilots are here two
6 or three years and captains are earning a hell of a lot
7 more than that.' Were you there two or three years at
8 that time?

9 A Yes, sir, I was.

10 Q Were you earning a hell of a lot more than --

11 MR. SHANAHAN: (Interrupting) I object
12 to the form of the question.

13 THE COURT: Overruled.

14 THE WITNESS: No, sir, I wasn't.

15 BY MR. CHALENSKI:

16 Q Were you earning less than \$13,000.00?

17 A In 1974, I believe it was about \$13,000.00.

18 Q Did you have any meetings with either the Defendant,
19 Winston or Bell, following October 5th, 1974?

20 A Yes, sir, several meetings.

21 Q And do you recall when the first of those meetings took
22 place?

23 A Oh, shortly after the pilots' meeting, the first pilot
24 meeting with Mr. Winston and Mr. Bell.

25 Q Do you recall what was discussed at that meeting?

1 A Yes, sir. There was a lot said that -- well, there was
2 a lot said at the pilots' meeting. I was asked how I
3 felt about a union, and the Teamsters union, specifically.

4 Q At the conclusion of that meeting, did you have any
5 further discussions with the Defendant Winston?

6 A After the meeting, yes, outside of the office.

7 Q And how long after that meeting?

8 A Oh, two minutes.

9 Q And what did you say, and what did the Defendant say?

10 A I had left the office, and I had went to see Mr. Bell
11 about some operational matter. Mr. Winston came out of
12 the office, and came over to me and said, ' We have to
13 know who is loyal. Will you give me your ballot?' I
14 said, 'Yes'.

15 Q Did you give him your ballot at that time?

16 A No, sir, I didn't.

17 Q Did there come a time when you did give your ballot to
18 Mr. Winston?

19 A Yes, sir.

20 Q And when did that take place?

21 A It was probably four days or a week later, maybe.

22 Q And was anything said at that meeting?

23 A No, sir.

24 Q Was anything further said during that meeting, or
25 shortly after your first talk in Bell's office?

- 1 A Yes, sir. I asked if it wasn't illegal for Mr. Winston
2 to have my ballot. He said, 'Don't worry. Don't worry
3 about it.'
- 4 Q Did there come a time -- excuse me, you said that you
5 later did give him your first ballot?
- 6 A Yes, sir, I did.
- 7 Q And did there come a time when you got a second ballot?
- 8 A Yes, sir.
- 9 Q And what did you do with that ballot?
- 10 A I mailed it in.
- 11 Q Did there come a time that after the election that you
12 discussed that second ballot with the Defendant Winston?
- 13 A Yes, sir.
- 14 Q And when did that take place?
- 15 A The day after the election, after the ballots were
16 turned in and the election was declared.
- 17 Q And what did you say, and what did he say?
- 18 A Mr. Winston said, 'I hear that you didn't vote in the
19 election?' I said, 'Yes.' And he said, 'Would you be
20 willing to sign a statement to that effect?' And I said,
21 'Yes, I would.'
- 22 Q And did you sign a statement?
- 23 A Yes, sir, I did.
- 24 Q And did you subsequently sign a statement wherein you
25 said you voted in the election?

1 A Yes, sir, I did.

2 Q With the National Mediation Board?

3 A Yes.

4 Q I show you Government's Exhibit twenty in evidence, and
5 is that the date that you signed for the National
6 Mediation Board?

7 A Yes, sir, it is.

8 Q And in that statement you affirmed to the National
9 Mediation Board that you cast a ballot in the election?

10 A Yes, sir.

11 Q Did you lie on one of those statements?

12 A Sir?

13 Q Did you lie on one of those statements?

14 A On the first statement, I did, yes, sir, to Mr. Winston.

15 Q Up until right now, on the stand, have you ever told
16 either Mr. Winston or Mr. Bell, or Mr. Herrington, that
17 you voted in that election?

18 A No, sir, I haven't.

19 Q During the course of your employment with the Defendant,
20 how much advance notice was given for scheduling pilots
21 and co-pilots for flights?

22 A Oh, anywhere from two days to fifteen minutes.

23 Q When a pilot was not scheduled to fly, was there any
24 requirement of leaving his whereabouts so that he could
25 be called up?

- 1 A Yes, sir.
- 2 Q And what is that requirement?
- 3 A Well, we have to be within a half an hour of the airport.
- 4 Q Now, assuming that you are scheduled for a flight from
- 5 two o'clock in the afternoon until four o'clock in the
- 6 afternoon, is there an accepted interpretation of that
- 7 rule in the company as to when they can call you up for
- 8 another flight?
- 9 A Well, if I had a two o'clock flight, I could be called
- 10 in the morning. I have to be available in the morning
- 11 for another flight.
- 12 Q Is it true that your duty day is fourteen hours, your
- 13 maximum duty day?
- 14 A Maximum duty day is fourteen hours.
- 15 Q And the company requires you to be within a half an hour
- 16 of the airport during your duty time?
- 17 A Yes, sir.
- 18 Q Now, if your flight is scheduled from two o'clock to
- 19 four o'clock, that is your own flight schedule that day,
- 20 and when would your duty time commence?
- 21 A At one o'clock in the afternoon. I would be on call in
- 22 the morning as early as six-thirty.
- 23 Q And you would be on call as long as fourteen hours before
- 24 the termination of your scheduled flight, is that correct?
- 25 A Yes, sir, it is.

1 Q And if, in fact, you did not, or were not called during
2 that call period, and your first flight of the day was
3 that scheduled flight, you would then remain on call
4 for fourteen hours after that flight began?

5 A Yes, sir.

6 Q So possibly could there be a situation such as that where
7 you were on call for twenty-four hours a day, is that
8 correct?

9 A Yes, sir.

10 Q Were you ever called for a flight?

11 A Yes, sir, many times.

12 Q And did you ever refuse to fly?

13 A Only if it put me over duty time.

14 Q And how often did that happen?

15 A Oh, maybe once a month.

16 Q Did you ever arrive later than the one-half hour
17 required time?

18 A Yes, sir.

19 Q And when did that happen?

20 A Oh, there were several times. I can't really make it
21 in a half hour unless you are shaved, showered, dressed
22 and ready to go out the door. There are time when I
23 was working on the lawn, or working on the car, or doing
24 something around the house where I would have to shower
25 before I could get to work, and I would report late.

1 Q How often did you report late when called?

2 A That is really hard to say. Rarely, I would say.

3 MR. RICHARDS: I didn't get that.

4 THE WITNESS: Rarely.

5 BY MR. CHALENSKI:

6 Q Can you tell how many times in a month, for example, that
7 you reported late? Well, first, how many times would
8 you be called in a month for a flight?

9 A Maybe four or five times a month.

10 Q And do you have any recollection of how often you would
11 report late of those four or five times?

12 A Well, on an average of maybe once.

13 Q Once a month?

14 A Possibly. It really would vary, as far as that.

15 Q During your course of employment at Commuter Airlines
16 have you ever had occasion to test fly an airplane on
17 a fifteen minute rest stop?

18 A No, sir.

19 MR. SHANAHAN: I object to that -- the
20 form of that question.

21 THE COURT: Overruled.

22 BY MR. CHALENSKI:

23 Q Do you know whether anybody else in the company was
24 ever required to test fly an airplane on a fifteen
25 minute rest stop?

1 A Just Mr. Lamos is the only person I have heard of do that
2 sort of thing.

3 Q And that was on the one occasion, the day he was fired?

4 A Yes, sir.

5 Q Did you ever have any conversations with either the
6 Defendant Winston or Defendant Bell concerning Mr. Lamos?

7 A I had an occasion with Mr. Bell and Mr. Herrington.

8 Q And when did that take place?

9 A Oh, it was sometime after the first pilot meeting.
10 I can't remember the exact date.

11 Q And it was prior to the time that Lamos was fired?

12 A Yes, sir.

13 Q And do you recall how far prior to that date?

14 A Oh, maybe three weeks; two weeks.

15 Q Now, what did you say and what did Defendant Bell say
16 at that meeting?

17 A I don't recall -- I don't remember how the conversation
18 started, but it was -- it was talking about, we are
19 talking about the union, discussing the union, and a
20 point was raised that Mr. Lamos had been quite vocal
21 at the first meeting prior to -- well, the very first
22 meeting with the captains where they had met at my house,
23 and Mr. Lamos had been quite vocal, and that he was a
24 rebel-rouser, and causing trouble. I am not absolutely
25 positive, but I believe it was Mr. Bell said that we

1 have to -- I don't remember the exact words, but something
2 that we have to get rid of him, or he shouldn't be
3 around. I just can't remember the exact words. I just
4 remember the general tone of the conversation.

5 Q Your best recollection -- to your best recollection,
6 what did he say?

7 A That Mr. Lamos was a rebel-rouser, and shouldn't -- he
8 shouldn't be here, or shouldn't be around.

9 Q During the course of your employment with Commuter
10 Airlines, can you characterize the ratio which you did
11 observe between captains and co-pilots?

12 MR. SHANAHAN: Ratio of what?

13 BY MR. CHALENSKI:

14 Q The ratio between captains and co-pilots. The number
15 of captains as compared to the number of co-pilots?

16 A Numbers, there are more captains than co-pilots.

17 Q Did there come any time when that ratio changed
18 substantially?

19 A Yes, sir. During the time of the -- when the union was
20 just starting.

21 Q And what dates would you include in that?

22 A Oh, from September to October, for the next nine months.

23 Q And in what way did that ratio change?

24 A We lost quite a few co-pilots.

25 Q And that was you lost quite a few co-pilots in relation

1 to captains?

2 A Yes, we may have lost one captain, and probably eight
3 or nine co-pilots.

4 Q Can you tell the jury your opinion of the pilot ability
5 of the following individuals: Robert Slough?

6 MR. SHANAHAN: I object to this, if the
7 Court please; asking the witness to pass judgement on
8 the capability of various other company employees.

9 THE COURT: You will have to qualify him
10 as an expert.

11 MR. CHALENSKI: May I rephrase the question.

12 BY MR. CHALENSKI:

13 Q Mr. Kleitz, did you fly with co-pilots during the course
14 of your employment at Commuter Airlines?

15 A Yes, sir, I did.

16 Q Did you observe the performance of the co-pilots that
17 you flew with?

18 A Yes, sir.

19 Q And can you render an opinion as to how those pilots
20 performed as pilots, with you?

21 A Yes, sir, I can.

22 THE COURT: Sustained. You have got
23 to qualify him as an expert. Don't you understand what
24 I mean?

25 BY MR. CHALENSKI:

1 Q Mr. Kleitz, how many hours have you flown?

2 A I have about six thousand hours.

3 Q You are designated as an instructor by the Federal
4 Aviation Administration, and do you have your instructor's
5 certificate?

6 A I did have one, but it lapsed. I let it lapse about
7 a year ago. I am an instructor or captain for the
8 company.

9 Q Do you recall the date that that lapsed?

10 A May of 1975.

11 Q Okay. As one of the requirements of an instructor's
12 certificate, are you required to observe the performance
13 of other pilots?

14 A Not quite in that manner. The captain -- I am supposed
15 to observe.

16 Q And report to whom?

17 A We have training and qualification sheets that we are
18 supposed to fill out to report on the co-pilots.

19 Q And what rating would you give the co-pilots on those
20 rating qualification sheets?

21 A Satisfactory or unsatisfactory.

22 Q And can you tell me whether the following co-pilots
23 were satisfactory or unsatisfactory, in your opinion,
24 Robert Slough?

25 MR. SHANAHAN: Just a minute, now. I

1 want to object to that.

2 THE COURT: What is your ground?

3 MR. SHANAHAN: My ground is that it is
4 incompetent and completely immaterial to the issues that
5 we have here.

6 THE COURT: Overruled on the immaterial
7 point. Why do you say it is incompetent?

8 MR. SHANAHAN: Well, it is having this
9 witness undertake to give his opinion.

10 THE COURT: So you say he is not qualified
11 to give an opinion in that?

12 MR. SHANAHAN: Well, I submit that I would
13 have to prove him not to be competent.

14 THE COURT: Well, on the grounds that
15 he is not qualified?

16 MR. SHANAHAN: I don't know anything about
17 this individual's qualifications, and I cannot say and
18 I don't want to -- he hasn't shown by his testimony --

19 THE COURT: (Interrupting) I agree that
20 you haven't established his qualifications.

21 MR. CHALENSKI: I have changed my
22 question. The witness has testified that in the course
23 of his employment --

24 THE COURT: (Interrupting) I heard what
25 he has testified to. But you haven't established his

1 qualifications. Go ahead.

2 MR. CHALENSKI: I am not, at this time,
3 qualifying him as an expert, Your Honor.

4 THE COURT: Then he can't give an opinion.

5 MR. CHALENSKI: I am asking him to give
6 the opinion that he just stated that he renders to
7 Commuter during the course of his employment.

8 THE COURT: I have sustained that
9 objection. Qualify him as an expert, if you want him
10 to give an opinion.

11 BY MR. CHALENSKI:

12 Q Have you ever been designated a check pilot by the
13 Federal Aviation Administration?

14 A No, sir, I haven't.

15 Q Were you ever a check pilot in the army or the Air Force?

16 A No, sir, I wasn't.

17 Q During the period from September, 1974 to July of 1975,
18 do you know whether Commuter Airlines changed the
19 number of flights that they were running --

20 MR. RICHARDS: Objection, as to
21 immateriality.

22 THE COURT: Overruled.

23 THE WITNESS: I believe the number of
24 flights stayed constant.

25 BY MR. CHALENSKI:

1 Q Throughout that period of time?

2 A Throughout that period of time.

3 Q Do you recall the day that Mr. Sholl was fired?

4 A Yes, sir, I do.

5 Q And was Mr. Sholl a co-pilot on that day?

6 A Yes, sir, he was.

7 Q And there came a time when you arrived, was it at the
8 Binghamton Airport?

9 A Yes.

10 Q With Mr. Sholl, and a plane load of passengers, is that
11 correct?

12 A Yes, sir.

13 Q And the plane load of passengers began to disembark and
14 Mr. Sholl left the cockpit?

15 A Yes, sir.

16 Q And did anything unusual happen after Mr. Sholl left
17 the cockpit?

18 A Yes, sir, I was finishing up the flight log in the
19 airplane when I heard the door crash to the -- it opened
20 and free fell and bottomed.

21 Q Okay. Does the door which opens normally make a sound
22 like that?

23 A No, sir, it does not.

24 Q What did you do next?

25 A I got out of the cockpit to take a look at the damage

1 and I asked Mr. Sholl what had happened and he said that
2 the door had free fallen and the snubber had failed and
3 the door had gone all of the way to the bottom and free
4 fell.

5 I returned to the cockpit, and I called
6 over to the office on the radio, and requested a mechanic
7 to come and check the door.

8 Q Who was , between the co-pilot and the pilot, who was
9 responsible for the structural integrity of the aircraft?

10 A Ultimately I am responsible for any damage.

11 Q And you called the mechanic over the radio, is that correct?

12 A Yes.

13 Q And did a mechanic come?

14 A Two of them came.

15 Q And what happened then?

16 A I told him that the door had free fallen and bottomed out,
17 and the snubber had broken.

18 Q And did you hear any conversation that Mr. Sholl had
19 with these mechanics?

20 MR. RICHARDS: I object as hearsay.

21 THE COURT: I beg your pardon?

22 MR. CHALENSKI: The question was: did
23 he hear anything that Mr. Sholl told the mechanics with
24 reference to the door. The Defendant, on their cross
25 examination of Mr. Sholl said that he was fired for not

1 telling anybody about it.

2 THE COURT: All right. I will allow it
3 for the fact of what was said, and not for the truth
4 of what was said.

5 MR. CHALENSKI: Thank you, Your Honor.

6 THE COURT: Go ahead.

7 BY MR. CHALENSKI:

8 Q Did you hear Mr. Sholl make any statement to the
9 mechanics?

10 A Yes, sir, he explained to them what happened.

11 Q And what did he say?

12 A He said that when he opened the door, the snubber didn't
13 engage and the door just kept on going, and bottomed
14 out.

15 Q And following that, what happened — excuse me, did you
16 bring the plane back to the hangar?

17 A Yes, sir. I was supposed to turn around the airplane
18 and go right back out again. But it quite obvious that
19 the door was damaged and I had to take the airplane back
20 to the hangar. I took another airplane. I left that
21 airplane and jumped into another airplane immediately
22 for another flight.

23 Q Did you have occasion to discuss this incident with
24 the Defendants Winston or Bell?

25 A Yes, sir. When I heard Mr. Sholl was fired, I went into

1 Mr. Winston's office to explain what happened. I didn't
2 feel that he knew all of the facts in the incident.

3 Q And what did you tell him?

4 A I told him that I had talked to two of the mechanics out
5 in the hangar, and that they had --

6 MR. RICHARDS: Objection. I anticipate
7 hearsay testimony.

8 MR. CHALENSKI: This is for the purpose,
9 only, of the witness relating what he told Mr. Winston,
10 and what, if any action, Mr. Winston took, based on it.

11 THE COURT: Overruled.

12 THE WITNESS: I had talked to the
13 mechanics who had taken that snubber that had failed,
14 and they reattached it to another airplane.

15 THE COURT: Is this a conversation with
16 Winston? Is that what you are asking? It is awfully
17 hard for me to follow what you are asking.

18 MR. CHALENSKI: I am asking the witness
19 to tell what he told Mr. Winston, and what the Defendant
20 Winston told him.

21 THE COURT: What did you tell Mr. Winston?

22 THE WITNESS: I told Mr. Winston about
23 my conversation with the mechanics.

24 THE COURT: What did you tell him about
25 -- your conversation with the mechanics?

1 THE WITNESS: I told him that the mechanics
2 had said the snubber worked initially when they tested
3 it and then it failed.

4 THE COURT: And what did he say?

5 THE WITNESS: Mr. Winston said, 'Don't
6 tell me what happened. I know what happened.'

7 BY MR. CHALENSKI:

8 Q Mr. Kleitz, prior to coming here today, you reviewed
9 your log book to determine when you first flew with
10 certain persons in the corporation, is that correct?

11 A Yes, sir.

12 Q And did you fly with those persons shortly after they
13 became employed?

14 A Yes, sir, I did.

15 Q I am handing you Government's Exhibit thirty-four for
16 identification, and are those notes prepared by you
17 at my direction?

18 A Yes, sir. and can you tell the jury when you first flew
19 with Captain Fred Greenough? Can you tell the jury
20 when you first flew with Captain Greenough?

21 A December of 1974.

22 Q And he would have been hired shortly before that?

23 A Yes, sir.

24 Q And Doug Pottermann, Captain?

25 A I have February of 1975.

1 Q And Henry Mellick, Captain?

2 A I flew with him first in March of 1975.

3 Q And John Morreity, co-pilot?

4 A Here it is, March of 1975.

5 Q And Frank McKeon, co-pilot?

6 A April of 1975.

7 Q And Paul Darby, co-pilot?

8 A I first flew with him in May of 1975.

9 Q Joe Nado, co-pilot?

10 A Also May of 1975.

11 Q Al Gerrin, co-pilot?

12 A June of 1975.

13 Q And is it your testimony that those persons were
14 employed shortly before you flew with them in each case?

15 A Yes, they had to go through a training period.

16 Q And you flew with them during their training period?

17 A Shortly after their training period. In some cases the
18 captains started out as co-pilots, and I flew with them
19 during their training period.

20 MR. CHALENSKI: Thank you, Mr. Kleitz.

21 That is all I have.

22 CROSS EXAMINATION

23 BY MR. RICHARDS:

24 Q Mr. Kleitz, how long before the election did you have
25 an opportunity to talk to Ted Bell, in Washington, D.C.,

1 regarding this election?

2 A I may have, I don't remember, sir.

3 Q You have no recollection of that conversation with Ted
4 Bell?

5 A Not off the top of my head.

6 Q In any event, you have earlier testified as to a conver-
7 sation with Jerry Winston regarding that election, is
8 that correct?

9 A Yes, sir.

10 Q And this conversation took place at the offices at
11 Broome County Airport?

12 A Yes, sir.

13 Q And can you recall approximately how long after the
14 election the conversation took place?

15 A I had a conversation with him before the election, and
16 after the election.

17 Q But more specifically, I believe that you testified that
18 you had signed some type of statement at Mr. Winston's
19 request, is that correct?

20 A Yes, sir.

21 Q And did this conversation take place after the election?

22 A About the statement?

23 Q Yes.

24 A Yes, sir, it did.

25 Q Now, how long would you estimate this conversation of

1 Mr. Winston's lasted?

2 A Probably half an hour.

3 Q Had you been called into the office, or were you going in
4 voluntarily?

5 A I had gone in voluntarily.

6 Q Do you recall why you had gone into the office?

7 A Yes, sir, I wanted to talk about Paul Sholl and the door
8 incident, and I wanted to present the facts to him that
9 I didn't think he was aware of.

10 Q And is this at the same time you discussed the Paul Sholl
11 incident that you also discussed the election?

12 A We didn't really discuss the election that much. It was
13 mainly concerned with the Paul Sholl incident.

14 Q But in any event, at the time that you discussed the Paul
15 Sholl incident with Winston, you also discussed the
16 election, is that correct?

17 A Yes, sir. He had said that he had heard that I had not
18 voted in the election.

19 Q And what did you say in reference to that statement by
20 him?

21 A That that was correct, I did not vote in the election.

22 Q And did you make any further statements to him about
23 the election?

24 A Yes. We talked about -- I don't know if it was at that
25 meeting or possibly a subsequent meeting, and something

1 about getting another union or -- something along that
2 line. I don't remember exactly what it was.

3 Q Now, this discussion about getting another union, who
4 brought that up, do you recall?

5 A No, sir, I don't.

6 Q So I take it from your testimony that you had two con-
7 versations with Mr. Winston about the election,
8 following the election?

9 A I can't be absolutely positive. It may have taken place
10 at that first meeting. There may have been a second
11 meeting or more. I don't know. We had quite a few
12 meetings.

13 Q Well, in either event, or either case, do you recall
14 any other comments that you made to Mr. Winston concerning
15 the election?

16 A No, sir. I don't.

17 Q Do you recall any reference being made to retaining
18 an attorney, at one of these meetings?

19 MR. CHALENSKI: Your Honor, I object.

20 It is beyond the scope of direct.

21 THE COURT: Sustained.

22 BY MR. RICHARDS:

23 Q Do you have any further recollection as to what Mr.
24 Winston might have said?

25 A I remember a statement that there was no way to get rid

1 of the union or get rid of the Teamsters . We were
2 stuck with them.

3 Q Did you, at this conference, indicate to Mr. Winston
4 that the election had been fraudulent?

5 A I expressed that I was surprised that the vote was so
6 large.

7 Q Did you indicate that you felt that there were certain
8 irregularities in the election?

9 A I don't believe so.

10 Q Have you tel me everything that you can recall that you
11 said to Mr. Winston at that session?

12 A Other than the details of our discussion about Mr. Sholl

13 Q Now, with regard to the Sholl door incident, as I under-
14 stand it, you were still in the cockpit at the time that
15 you heard a bang, is that correct?

16 A Yes, sir. The whole airplane shook.

17 Q And when you came out, where was Mr. Sholl? Was he
18 in the aircraft, or out of the aircraft?

19 A He had gone down to the bottom of the steps. We had
20 kept the passengers from off-loading.

21 Q And the passengers stayed on the aircraft?

22 A Yes, sir.

23 Q Now, did you discuss with Mr. Sholl the manner in which
24 the door had free fallen?

25 A No, sir, I d' 't.

1 Q So you had no understanding or knowledge as to whether
2 or not Sholl had used the guard chains at the door at
3 the time that the door was opened?

4 A No, sir, from my position in the cockpit, I can't see,
5 and I didn't ask him.

6 Q Now, you are familiar with the ground school training
7 regarding Metros, is that correct?

8 A Yes, sir.

9 Q And you have attended several sessions?

10 A Yes, sir.

11 Q And have you noted Sholl in attendance at these sessions?

12 A No, sir. I believe his ground school was well after
13 mine.

14 Q Let me ask you this: in the course of your instruction
15 in that ground school, is there any reference made to
16 the use of these chains at the time that the door is
17 opened?

18 MR. CHALENSKI: Objection, Your Honor,
19 as irrelevant.

20 THE COURT: Overruled.

21 THE WITNESS: I don't remember any
22 instructions about the door. I remember a note later
23 on, or a warning later on, to grab the chains.

24 BY MR. RICHARDS:

25 Q Was this a memo put out by the company?

1 A I am not sure. I believe it was.

2 Q And do you recall the substance of that memo that you
3 saw?

4 A We had had a door failure earlier, and we were supposed
5 to be on guard that if the snubber should fail to have a
6 hold on the chains to try and prevent it from bottoming
7 out.

8 Q So in any event, at the time that you opened the door,
9 the pilot should always grab the chain in the event of
10 a snubber failure?

11 A Yes, sir, he should.

12 Q Now, I gather from your testimony that you called main-
13 tenance regarding the incident, is that correct?

14 A Yes, sir, I called them on the radio.

15 Q And do you recall with whom you spoke with in maintenance?

16 A No, sir, it was one of the girls. I asked her to get
17 somebody from the shop over there.

18 Q So actually you reported the incident to the office?

19 A Yes, sir.

20 Q And they in turn went out to maintenance and told someone
21 to come over?

22 A Yes, sir.

23 Q And you don't recall the name of the girl that you spoke
24 with, do you?

25 A Gee, I really couldn't say.

1 Q Do you recall the names of the two mechanics that came
2 over to look at the door?

3 A One was Fred Maize, I believe, and I am not sure who
4 the other one was.

5 Q And were you still there when the mechanics arrived?

6 A Yes, sir.

7 Q And do you know if Sholl was there when the mechanics
8 arrived?

9 A I believe he was.

10 Q But you are not certain?

11 A I am not absolutely certain.

12 Q Now, in regard to the fourteen-hour duty you earlier
13 testified to, are you familiar with the regulations
14 of a company or the F A A regarding duty time for
15 pilots?

16 A Yes, sir.

17 Q And isn't it a fact that duty time in effect says that
18 a pilot is entitled to ten uninterrupted hours of no
19 duty?

20 A That is correct, sir.

21 Q And also when you were talking about being on duty over
22 a fourteen-hour period, that doesn't mean working that
23 entire fourteen hours, does it?

24 A No, sir, it doesn't.

25 Q In fact, it is very possible that you could have a flight

1 in the morning seven to nine-thirty, and not return for
2 a flight until four or five in the afternoon, is that
3 correct?

4 A Yes, sir.

5 Q And during the period of time between those two flights,
6 you can generally do what you want and you don't have to
7 remain at the airport, do you?

8 A That is correct.

9 Q And as a matter of fact, if you played golf, you could
10 go out and play golf?

11 A I don't know if you would have enough time, but it is
12 possible, I suppose.

13 MR. RICHARDS: Thank you.

14 BY MR. SHANAHAN:

15 Q Mr. Kleitz, you made mention in your direct examination
16 of a meeting that was held at your home, do you recall
17 that?

18 A Yes, sir.

19 Q And was this a meeting that was held in the month of
20 August, or July, somewhere around in that area?

21 A I believe it was early August.

22 Q In early August. That would be in 1974, of course, would
23 that be right?

24 A Yes, sir.

25 Q Now, this was held at your home?

1 A Yes, sir.

2 Q And did you arrange that meeting, Mr. Kleitz?

3 A More or less, yes, sir.

4 Q And now, do you recall now, who was present at that
5 meeting?

6 A I believe all the captains then employed were there.

7 Q All of them would be your recollection?

8 A To the best that I can remember, yes, sir.

9 Q Now, was Ted Bell there at that meeting?

10 A Yes, sir.

11 Q And was Mr. Herrington there, also, at that meeting?

12 A Yes, sir, he was.

13 Q And do you remember a pilot by the name of Reeve was
14 present at that meeting?

15 A No, sir -- yes, sir, I believe he was. If it wasn't, it
16 was the second meeting that he came to. He was at one
17 of the meetings.

18 Q He was at one of them?

19 A Yes, sir.

20 Q Now, as the subject matter of this first meeting, it was
21 generally the working conditions of the pilots, would
22 that be true?

23 A Yes, sir.

24 Q And there was some discussion as to what conceivably
25 might be taken up with Mr. Winston to better or improve

1 those conditions?

2 A Yes, sir.

3 Q Would that be generally the sense of the meeting, all
4 right. And one of the pilots sort of acted as
5 secretary and made notes of the various matters that
6 were covered at that first meeting?

7 A Yes, sir.

8 Q Now, do you recall that there were a couple of pilots,
9 or perhaps more, who were not present at that first
10 meeting and as a result there was some discussion that
11 perhaps their views should be obtained?

12 A Yes, sir, that is right. I remember that.

13 Q That is so?

14 A Yes.

15 Q And would that tend to refresh your recollection as to
16 whether Mr. Reeve was one of those that was absent from
17 that first meeting?

18 A That is two years ago. I can't really place that.

19 Q All right, but at the termination of the first meeting,
20 I think that you agree there was some discussion that
21 the absent pilots, that is, those that were not there
22 in attendance, ought to be consulted on the various
23 matters that you people had discussed?

24 A Yes, sir, to provide the input.

25 Q I beg your pardon?

1 A To provide a total in put into it.

2 Q All right. Now, at that time, Mr. Kleitz, was there
3 a second meeting scheduled for a later date?

4 A Yes, sir, there was.

5 Q And there was a second meeting also at your home, was
6 there not?

7 A Yes, sir.

8 Q And you have indicated to us that your recollection is
9 that the first meeting occurred in August of 1974, and
10 would the second meeting have been sometime toward the
11 end of September of 1974?

12 A I don't believe it was that long after the first meeting.

13 Q Would you be able to place it at all, the period of time
14 that you say elapsed between the two meetings?

15 A I would say within a couple of weeks.

16 Q Within a couple of weeks. Now, at the second meeting,
17 were all of the pilots there on that occasion of the
18 second meeting?

19 A No, I don't believe all of the pilots were there.

20 Q Do you have any recollection as to whether those who
21 had been absent from the first meeting, did, in fact,
22 attend the second meeting?

23 A Yes, sir, I believe that -- I believe that we talked to
24 everyone; everyone got their say.

25 Q And what you mean, I presume, is that between the two

1 meetings everybody was covered, is that what you meant?

2 A Yes, sir, I believe that we did get everyone.

3 Q And do you recall that Mr. Reeve attended the second
4 meeting, rather than the first? Would you have any
5 recollection on that subject?

6 A I couldn't be sure which meeting he came to.

7 Q Now, there came a time, when, I presume, that you
8 received an unsigned communication in your mailbox
9 indicating that some outside union might be interested
10 in coming in or something of that nature?

11 A Yes, sir.

12 MR. CHALENSKI: I think that that is
13 beyond the scope of direct.

14 THE COURT: Overruled.

15 BY MR. SHANAHAN:

16 Q Do you recall about when you received that notification?

17 A No, sir, I don't remember the exact date.

18 Q Well, you did receive one in your mail slot, or mailbox,
19 and was that communication unsigned?

20 A Yes, sir.

21 Q And at the time that you received it, did you know who
22 was the author of it?

23 A No, sir, I didn't.

24 Q Now, the reason I asked you about that is: do you recall
25 whether the second meeting at your home was before or

1 after you had received that communication in your mail
2 slot?

3 A I believe it was before that communication.

4 Q You think it was before. Well, was there any discussion
5 at the time of this second meeting at your home, of
6 the possibility of some outside labor organization
7 coming in?

8 A Yes, sir.

9 Q There was some talk about it. Well, would that tend to
10 indicate to you, then, that that second meeting was
11 after you got this communication in your mailbox?

12 A No, sir -- I believe that we had both meetings before
13 we got that first letter.

14 Q I see, all right. Now, at the second meeting you have
15 indicated that you didn't think all of the pilots were
16 present at the second meeting. Sepcifically, let me
17 ask you: was Ted Bell there at the second meeting?

18 A Yes, sir, he was.

19 Q And so that, would it be correct, then, that Mr. Bell
20 was present at both of the meetings that took place at
21 your home?

22 A Yes, sir.

23 Q And you are fairly sure of that, are you?

24 A Yes, sir, I am sure that he was at both.

25 Q Now, in the second meeting that took place at your home,

1 you have indicated to me a moment or so ago that there
2 was some discussion during the course of that meeting
3 about the possibility of some outside union organization
4 coming in?

5 A Yes, sir.

6 Q And was that a matter of some general discussion, and
7 I mean by that, that various members of the people --
8 various of the people present, and I should not say
9 members, various of the people present at your home on
10 that occasion presented their views in connection with
11 it?

12 A Yes, sir.

13 Q And do you remember -- do you remember whether Captain
14 Floto was there at that time? Do you have any
15 recollection?

16 A Yes, sir, he was there.

17 Q And did he make some comment about it, do you recall?

18 MR. CHALENSKI: Objection, Your Honor.

19 It is hearsay.

20 THE COURT: Sustained.

21 BY MR. SHANAHAN:

22 Q Well, was there a discussion at that time that some of
23 the people, one or more of the people in attendance
24 had previously belonged to a labor organization, or do
25 you recall any thing like that?

1 A I don't remember, sir.

2 Q I see, all right. In the course of this discussion about
3 an outside labor organization possibly coming in there,
4 do you recall Mr. Bell saying that if that occurred, it
5 was his thought that all of you ought to attend whatever
6 meetings that organization might have, and listen to
7 whatever they had to say?

8 MR. CHALENSKI: Objection, Your Honor, as
9 hearsay.

10 THE COURT: Mr. Bell? Overruled.

11 BY MR. SHANAHAN:

12 Q Do you recall any discussion along that line, Mr. Kleitz?

13 A Not at that particular meeting, no, sir. I remember
14 when he said that we should go to the meeting to hear
15 what they say.

16 Q And when you say you remember his saying this, you are
17 talking now about Mr. Bell saying that at some point or
18 other?

19 A Yes, sir, he said it the night of the first union
20 meeting at the Holiday Inn.

21 Q Was he at that union meeting at the Holiday Inn?

22 A No, sir, he wasn't.

23 Q Well, now, I want to ask you about that meeting at the
24 Holiday Inn. Do you mean before that meeting, or that
25 meeting, or what, Mr. Kleitz?

1 A Before the meeting. He said that he thought we should
2 all attend the meeting.

3 MR. CHALENSKI: This is again, a line of
4 questioning that is --

5 THE COURT: (Interrupting) Yes, it is
6 hearsay.

7 MR. CHALENSKI: It is beyond the scope,
8 and if he wants to ask certain questions, they should
9 at least be in a non-leading form.

10 THE COURT: They are hearsay. What Mr.
11 Bell told him is hearsay.

12 MR. SHANAHAN: Well, Your Honor, in view
13 of the fact that Mr. Bell is the Defendant, and charged
14 with obstructing union activities, it seems to me to
15 have some significance if Bell advised these people to
16 go to the union meeting.

17 THE COURT: That may be, but it is still
18 hearsay what Bell said. I also question the materiality.

19 MR. SHANAHAN: Well, all right.

20 BY MR. SHANAHAN:

21 Q But, as I understand you, Mr. Kleitz --

22 THE COURT: (Interrupting) You can
23 establish it for the fact that he said it, without the
24 truth --

25 MR. SHANAHAN: (Interrupting) That is

1 all I wanted to do. I didn't want to establish any
2 conversation, other than that.

3 THE COURT: All right, all right.

4 BY MR. SHANAHAN:

5 Q Well, Mr. Kleitz --

6 THE COURT: (Interrupting) Can you put
7 a leading question? This is cross examination.

8 BY MR. SHANAHAN:

9 Q Would it be correct for us to understand that sometime
10 before this meeting of October the 2nd, I guess it was,
11 the union meeting, and I want to be sure that we under-
12 stand each other?

13 A Before the meeting, the union meeting with the Teamsters.

14 Q With the Teamsters, the one that took place in the
15 Holiday Inn at Binghamton?

16 A Okay.

17 Q Or Vestal, or wherever it was. I am not sure of the
18 exact location, and the one that Mr. Calder was present
19 at?

20 A Yes, sir.

21 Q And let me ask you, before I get to that further: had
22 you, previous to that meeting, yourself, ever met Mr.
23 Calder before?

24 A No, sir.

25 Q So that was the first time that you saw him. That is

1 the meeting that I am talking about. Are we to understand
2 then, that before that meeting began, at some other
3 point or other, you had seen Mr. Bell?

4 A Yes, sir.

5 Q And would that be right, and was that the occasion that
6 you told us he said, in substance, that he thought that
7 you people ought to go to the meeting and hear what the
8 union had to say?

9 A Yes, sir.

10 Q And do you recall where that conversation took place?

11 A I believe it was at the office.

12 Q At the office. And did you --

13 MR. CHALENSKI: (Interrupting) I renew
14 my objection. It is beyond direct, and I don't mind
15 him getting into it --

16 THE COURT: (Interrupting) Overruled.
17 It is not beyond direct. It is within the general scope
18 of the direct. Proceed.

19 BY MR. SHANAHAN:

20 Q Now, at the time that you had that conversation with
21 Mr. Bell that we have just talked about, were there
22 any other persons present at that conversation except
23 you and Mr. Bell?

24 A I couldn't say for sure there was.

25 Q And it was following that conversation with Mr. Bell that

1 you did attend the meeting?

2 A Yes, sir.

3 Q All right. Now, that meeting we are told lasted
4 throughout that evening, and into, perhaps the early
5 hour of the following morning, would that be correct?
6 Would that be in accordance with your recollection?

7 A I had a flight that evening, and I got there late, and
8 I had a flight the next morning pretty early, so I left
9 pretty early, also. I was not there for the entire
10 meeting, but it was just starting to break up when I
11 left.

12 Q I see. Were you there long enough that you heard whatever
13 remarks Mr. Calder may have made at that meeting?

14 A Yes, sir.

15 Q Okay. Now, I think that you told us that after that
16 meeting with the Teamsters, that you did attend a
17 meeting of the pilots at the office and then at times
18 that Mr. Winston and Mr. Bell were present?

19 A Yes, sir.

20 Q Would that be right. Now, the meeting with the Teamsters,
21 we are told, took place on October 2nd, and I think on
22 one occasion, there was a mention of October 3rd, but
23 would you agree that it was at about that time?

24 A I would agree it was around the beginning of October.

25 Q The early part. Now, this meeting that you speak of

1 with Mr. Winston and Mr. Bell being present, how long
2 was that -- was it -- was that meeting after the union
3 meeting?

4 A Several weeks, I believe.

5 Q Several weeks?

6 A Yes. I can't exactly place when the meetings -- the
7 exact time frames, but it was --

8 Q (Interrupting) In any event, I think that you told Mr.
9 Chalenski that it was your recollection that the meeting
10 was on a Saturday?

11 A A Saturday.

12 Q And it was a meeting of all of the pilots, the one that
13 you attended, and all of the captains?

14 A Yes, sir.

15 Q And Mr. Winston and Mr. Bell?

16 A Yes, sir.

17 Q And I think that you also indicated that either earlier
18 or later that same day there had been a meeting of all
19 of the co-pilots?

20 A Yes, sir, I believe it was our meeting that was in the
21 morning, and their meeting was in the afternoon.

22 Q All right. Now, first of all, let me ask you: did
23 anybody tape what occurred at your meetings so far as
24 you have ever heard?

25 A No, sir, not that I know of.

1 Q And at the subsequent meeting, that is the co-pilots'
2 meeting, a tape was made of what was said by Mr. Winston
3 and partially by Mr. Bell?

4 A Yes, sir.

5 Q Have you ever had the opportunity to hear that?

6 A No, sir, I have never heard the tape.

7 Q Or have you ever read a transcript of it?

8 A No, sir, I have heard bits and pieces of it from the
9 other pilots. That is it.

10 Q That is, you mean in the form of conversation?

11 A Yes, sir.

12 Q Well, I wondered if you ever had an opportunity to read
13 that over so that you would be in a position to tell us
14 whether or not what was said by Mr. Winston and Mr. Bell
15 at your meeting was identical with what was said by
16 those two people at the co-pilots' meeting?

17 A I understand it was very similar.

18 Q It was very similar?

19 A Yes, sir.

20 Q Let me ask you: at the captains' meeting, when Mr.
21 Winston spoke, was part of what he had to say something
22 that he had read, obviously read from some paper or
23 papers that he had before him?

24 A Yes, sir, I believe that the notes that he had made,
25 and I believe that he had used those notes back at the

1 first union election --

2 Q (Interrupting) Back in 1970?

3 A Yes, right.

4 Q And so that you recall that format at least, at the
5 meeting of the captains', the one that you attended?

6 A Yes, sir. He did not look at them very often, but he
7 had notes.

8 Q All right. Now let me ask you: in addition to that
9 meeting that you attended, the one with the captains
10 where Mr. Winston and Mr. Bell were there, were there
11 any subsequent group meetings that you attended?

12 A I believe there was another mass meeting with the pilots
13 and the co-pilots and Mr. Winston, but I don't really
14 have a good recollection of that meeting.

15 Q I see. That would be a later time, would it?

16 A Yes, sir.

17 Q And would that have been a meeting again where Mr.
18 Winston and Mr. Bell spoke?

19 A Yes, sir.

20 Q One or the other or both?

21 A Yes, sir. I believe Mr. Winston spoke.

22 Q And not Mr. Bell?

23 A I don't remember him speaking.

24 Q And as I understand it, you don't have too clear a
25 recollection as to what transpired at that meeting?

1 A At the second meeting -- I may have gotten some of the
2 first meeting mixed up with the second meeting.

3 Q I see. You are relying necessarily, I assume, on your
4 recollection of events that occurred back in October and
5 perhaps early November of 1974, would that be right?

6 A Yes, sir.

7 Q And I assume that you had no occasion to take notes?

8 A I had taken some general notes, and I had reviewed them,
9 but I really couldn't find anything that made sense to
10 me. I was scribbling and I just -- it didn't really
11 help me.

12 Q All right. I think that you told Mr. Chalenski that you
13 never test flew an airplane during a fifteen-minute
14 rest stop?

15 A No, sir, I can't remember doing that.

16 Q Well, let me ask you: I take it that you consider a
17 rest stop to be the period of time that would have
18 elapsed between landing one flight and taking off another,
19 is that what you are referring to as a rest stop?

20 A I don't know if I call it a rest stop, myself. A
21 short break, and go and check the weather.

22 THE COURT: Could you do a test flight
23 within fifteen minutes?

24 THE WITNESS: No, sir.

25 THE COURT: Is it possible to fly a test

1 flight within fifteen minutes?

2 THE WITNESS: To fly the airplane, no,
3 sir.

4 BY MR. SHANAHAN:

5 Q A test flight where there was a fifteen-minute period
6 involved would necessarily go beyond a fifteen-minute
7 period, is that what you mean?

8 A Would you repeat that, please?

9 Q If a test flight of an airplane was to be made it would,
10 I take it you are indicating, would take longer than
11 fifteen minutes?

12 A Yes, sir. If the airplane had to be flown, it would
13 take more than fifteen minutes.

14 Q How long would it take?

15 A Oh, if it was done properly, probably a half an hour to
16 maybe an hour.

17 Q I suppose it depended on what you are testing it for,
18 wouldn't it?

19 A Yes, sir.

20 Q And are there test flights where you simply put a plane
21 into the air and circle around the airport and bring
22 it back in again?

23 A Yes, sir.

24 Q And have you had occasion, yourself, to make test flights?

25 A Yes, sir.

1 Q And was it a company rule that wherever any work had been
2 done on an airplane it would be necessary to test fly it
3 before passengers were allowed to be flown in it?

4 A Any significant work, yes, sir.

5 Q And with major repair work it was an F A A rule that
6 a flight or a plane had to be test flown, would that be
7 right?

8 A Yes, sir.

9 Q And so that what we are confronted with here, and
10 referring now to Mr. Lamos' experience, if a pilot
11 coming in, as he did from Newark, about to go to Elmira,
12 if he had to fly a test flight, he would be off schedule
13 for the balance of his trip to Elmira, isn't that what
14 it amounts to, if he had done it? He didn't do it, but
15 if he had done it, he would have been late getting
16 into Elmira?

17 A Yes, sir.

18 Q You testified to something that I couldn't quite follow.
19 I would like to ask you just a couple of questions about
20 it, if I may. You were talking about arriving late,
21 apparently rarely when you were called to come into
22 work. Do you recall that subject?

23 A Yes, sir.

24 Q All right. Now, did you mean that when you were on call,
25 that you might have difficulty getting to the airport

1 from the time you received the call until you got there,
2 is that what you were saying?

3 A Well, say I was called in for a nine o'clock flight, or
4 a ten o'clock flight. I was called at 9:30 and told to
5 come to the airport. There are times that I just couldn't
6 make it on time to launch the flight on time.

7 Q I see. Well, now, with reference to your being on call,
8 and just so that we have an understanding about it: there
9 apparently is a time under the company rules when you
10 were supposed to be on call, that is correct, is it?

11 A Well, strictly speaking, on call was weekends when that
12 was in effect.

13 Q And that would be so, that you would be available so that
14 they could contact you should they need it?

15 A Right, if a charter came up, a sudden charter and we had
16 to be available to go.

17 Q I see. Now, let me ask you: when you were on call, that
18 did not mean that you had to stay at home, did it?

19 A No, but someone had to know where you were.

20 Q And when you were on call, would you, occasionally, call
21 into Commuter Airlines' office and say I can be reached
22 at such and such a telephone number? Wherever you intended
23 to go?

24 A Yes, sir.

25 Q And that was, I take it, a fairly common practice, was

1 it not?

2 A Yes, it was.

3 Q And then, it was necessary for the office to get a hold
4 of you, they would have a telephone number where you
5 could then be reached?

6 A Yes, sir.

7 Q Let me ask you: these calls that you gave some testimony
8 about, were those primarily on charter work?

9 A Probably fifty-fifty.

10 Q And by charter work, that would be somebody coming to the
11 airport and wanting to charter a plane for a particular
12 flight or trip?

13 A Yes, sir.

14 Q And you would be notified then to come to the airport
15 to accommodate that pilot, would that be it?

16 A Yes.

17 MR. SHANAHAN: May I have just a moment
18 here.

19 I think that that is all, Your Honor.

20 RE-DIRECT EXAMINATION

21 BY MR. CHALENSKI:

22 Q Mr. Kleitz, following the incident of damage to the door,
23 by co-pilot Sholl, the day that it happened to co-pilot
24 Sholl, the mechanics came to the plane and you testified
25 to cross examination that you weren't sure that Sholl

1 was there on that time, that is when the mechanics
2 arrived?

3 A I am not sure. He had to go inside because he was going
4 right back out on another flight, and I don't think he
5 was there. He may have been there, but I am not
6 absolutely positive.

7 Q Did you see Sholl talking to the two mechanics at any
8 time?

9 A Yes, I believe he did. He came back out to go out to
10 the next flight, and they were still there talking to
11 me, and they were inspecting the damage.

12 Q And you previously testified on direct that you overheard
13 Sholl say something to the mechanics at that time, is
14 that correct?

15 A That is correct.

16 Q And your statement on direct holds true?

17 A Yes, sir.

18 Q Do you know who the ground school instructor was at
19 Broome County Aviation?

20 A Oh, we had many. It depended on the subject, and the
21 aircraft type.

22 Q Who taught you ground school?

23 A The factory representatives.

24 Q And not an employee of Broome County?

25 A Are you talking about -- are you talking about the Metro

1 door?

2 Q Let me back up. Is there a training program which new
3 employees at the airline, Commuter Airlines, go through,
4 upon commencing his employment, known as ground ?

5 A Yes, sir.

6 Q And how long is that ground school?

7 A Oh, several days to a week.

8 Q And who taught ground school during the period of time
9 that you have been there; that ground school?

10 A Oh, Mr. Bell has taught it, Mr. Herrington, factory
11 representatives for the various products and equipment
12 that we use.

13 Q Do you know whether Mr. Briggs has taught it?

14 A Yes, Mr. Briggs taught it too.

15 Q And who taught you ground school?

16 A For the Metro aircraft, the factory representatives gave
17 us the ground school.

18 Q And do you know who taught Mr. Sholl's ground school?

19 A Mr. Briggs was giving the ground school then.

20 Q Mr. Kleitz, I am going to read to you the transcript
21 of the Defendant Bell's statement that he made to the
22 co-pilots on October 5th, 1974.

23 'Each and everyone of us has benefitted
24 by that policy and that practice and that effort that
25 has been put forward. Now, the longer you have been

1 here, the more you have benefitted by all of those
2 occasions here. People who know that I have bended
3 policies and bent rules and done that for them because
4 I have faith in them as people and professionals and
5 because I believe in it and I still believe in them.
6 But we have got this thing coming up, and I sincerely
7 am expecting your support.'

8 Well, that is pretty much what is says
9 in those two or three sentences.

10 Did Mr. Bell say that during the address
11 to the pilots previous to this meeting of September 5th?

12 A That sounds very familiar.

13 Q Excuse me?

14 A That sounds very familiar.

15 Q Did he say anything else?

16 A When the meeting was pretty much over, people were
17 getting up to stretch, and stretching and getting ready
18 to leave, and there were some pilots sitting around, and
19 had sat around Mr. Bell's desk, and I overheard him
20 saying that we have all had bad days but we won't have
21 them any more.

22 Q When an aircraft is received for engine repair, the
23 test flight has to be performed before the aircraft
24 is put back into service?

25 A Yes, sir.

1 Q And how long would a test flight for that purpose take?

2 A For engine maintenance?

3 Q Yes.

4 A Oh, normally I would say half an hour to an hour, de-
5 pending on what they had to check.

6 Q Now, when you were on call on weekends, is that what
7 you previously testified to, that you were expected to
8 be able to get back to the company within one half an
9 hour, or is that something different?

10 A Well, that may have been different. The half an hour was
11 primarily on week days. Weekends, we just did the best
12 we could.

13 MR. SHANAHAN: Weekends we did what?

14 THE COURT: Weekends we just did the best
15 we could.

16 BY MR. CHALENSKI:

17 Q How often were you on call on weekends?

18 A Probably it was on two weekends, and off one weekend.

19 Q Now, you said during y ur cross examination something
20 about a fifty-fifty charter, that was with reference to
21 when you were being called in? Fifty was charter, and
22 what was the other fifty?

23 A Commuter. Commuter operation.

24 Q And that would be scheduled flights?

25 A Yes, sir.

1 MR. CHALENSKI: Thank you.
2 MR. RICHARDS: No questions.
3 MR. SHANAHAN: No questions, Your Honor.
4 THE COURT: You are excused.
5 (Whereupon, the witness was excused.)
6 MR. CHALENSKI: Recall Mr. Ronald B.

7 Williams.

8 R O N A L D B. W I L L I A M S

9 Called as a witness, being previously duly sworn, was
10 further examined as follows:

11 DIRECT EXAMINATION

12 BY MR. CHALENSKI:

13 Q Mr. Williams, where do you reside?

14 A Binghamton, New York.

15 Q And what is your occupation?

16 A I have a camp ground ownership. A camp ground.

17 Q And were you employed by the Defendant, Broome County
18 Aviation, Inc., and Commuter Airlines, Inc.?

19 A Yes, I have been.

20 Q And when were you employed by them?

21 A I started part time about August of 1968, through
22 January of 1975.

23 Q And did you commence full time employment at some time?

24 A Full time in early 1970's. I would say around 1971.

25 Q Were there any persons in the company who had more

1 seniority than you?

2 A Well, there was --

3 Q (Interrupting) Strike that. Make it pilots.

4 A Well, John Herrington, and Hank Excell and of course,
5 Mr. Bell and Mr. Winston. I was really about the fifth
6 oldest, fifth or sixth oldest person there at that time.

7 Q You had previously testified in regard to a meeting on
8 Saturday, October 5th, 1974, is that correct?

9 A Right, yes, I did.

10 Q And following the meeting of Saturday, October 5th,
11 1974, did you attend any further group meetings at
12 which the Defendants Winston or Bell spoke to the pilots?

13 A I did -- to the pilots as a group. I don't really
14 remember as a group. Individual meetings with Mr. Winston.

15 Q When did that -- who was that individual meeting with?

16 A With Mr. Winston.

17 Q Was anybody else present?

18 A Ted Bell was present at that meeting, and that is the
19 only meeting that I can really remember.

20 Q And when did that take place?

21 A I am not sure of the date. It was prior to the elections
22 for the union.

23 Q Well, can you characterize how many weeks prior, or
24 how many days?

25 A Oh, not more than maybe a couple of weeks at the very

1 most, as I recollect.

2 Q Can you tell the jury what you said, and what Mr. Winston
3 and what Mr. Bell said at that meeting?

4 A The conversation went as to, again, relating --

5 Q (Interrupting) I asked you to say who said what. What
6 did Mr. Winston say?

7 A Oh, Mr. Winston did the talking. And now -- I am sorry,
8 I am getting two meetings involved here. The meeting
9 with Mr. Winston, Mrs. Winston was there. That was the
10 first meeting prior to the election, and I was thinking
11 about a second meeting later when they discharged me,
12 who was there. All right. Mr. Winston and Mrs. Winston
13 was there, and Mrs. Winston didn't say anything through
14 the whole meeting. Mr. Winston was telling me the pros
15 and cons again of union versus what they have done for
16 us, again.

17 And, I listened to him, and he asked me
18 how I felt, and I said I am listening to both sides. I
19 am listening to what you have to say and what they have
20 to say and making my own conclusions. And he said,
21 'Well, would you like to show that you are for me and
22 the way we think of Commuter?' I said, 'Yes, I am for
23 you.'

24 Then he said, 'Would you like to give me
25 your ballot,' and he held up a legal pad or yellow pad,

1 and he said, 'I have interviewed these other people, and
2 they have indicated that they would like to give their
3 ballots.' And I said to him, 'I don't have it with me.'

4 He said, 'That is all right, you can get
5 it if you want to and bring it back.'

6 I said, 'All right,' and I paused for a
7 minute and I said, 'Mr. Winston, I don't know why you
8 are collecting ballots, or why you are asking these
9 people for ballots because if they want to, they can
10 receive second ballots.' And he paused and looked at
11 me and he said, 'Well, I know that.'

12 I said, 'Well, I am just wondering why you
13 are taking them. They can say one thing and give them
14 to you and turn around and have another ballot if you
15 have taken it from them and vote anyway.'

16 So later, within two days, I would say,
17 I gave him my ballot, and that was about the end of
18 the conversation.

19 Q The second conversation that you referred to, when did
20 that take place?

21 A That took place in January of 1975, and that was when I
22 was terminated.

23 Q That was after the election?

24 A That was after the election, right.

25 Q And that was when you were terminated?

1 A Right.

2 Q And what day was that?

3 A I am going to say it was the seventeenth or the nineteenth
4 thereabouts, in January. It was on a Firday, whatever
5 that was.

6 Q Did you have any conversations with either the Defendant
7 Winston, or Bell, at that time?

8 A Mr. Winston carried the conversation, and Mr. Bell didn't
9 say very many words at all. Nothing, really.

10 Q He was present?

11 A He was present, yes.

12 Q And what did you say, and what did Mr. Winston say?

13 A Well, Mr. Winston started talking, and was explaining
14 about the economic situation these days, and how long
15 I had worked there, and just really not much of anything
16 that made much sense to me at first. But I had a suspicion
17 why I was in there.

18 MR. SHANAHAN: I object to this.

19 BY MR. CHALENSKI:

20 Q Just tell us , Mr. Winston said, and not what you said
21 and not your suspicions.

22 THE COURT: I guess it has been corrected?

23 MR. SHANAHAN: All right.

24 THE COURT: Strike that, about your
25 suspicions.

1 THE WITNESS: All right. I was told
2 about the economic situation, and he talked for about
3 five minutes, and I cannot say exactly what he had said,
4 but he paused, and I looked at him, and I said, 'Are you
5 telling me I am fired?'

6 And he looked at me and he said, 'I
7 wouldn't exactly say fired.'

8 And I said, 'Well, what are you saying?'

9 He said, 'Well, we are going to have to
10 let you go.'

11 Then I said, 'Let me go? What do I tell
12 the people downtown?' I meant the unemployment people.

13 'When they ask the reason why you are
14 terminated?'

15 He said, 'You are being let go. We are
16 overstaffed.'

17 And I said, 'All right. I don't see
18 why you are letting me go. I don't understand this
19 overstaffed thing,' and then he went on to bring up
20 reasons, other reasons why he thought he should let me
21 go.

22 BY MR. CHALENSKI:

23 Q What other reasons did he mention?

24 A Well, one he brought up was the fact that I had just
25 recently had trouble with a customer at a ticket counter

1 in Binghamton, at our ticket counter, and his name is
2 Mr. Kelly. He is a New York State Electric and Gas
3 President, and Mr. Kelly came up to the counter one
4 morning and wanted to check in for his flight to Newark,
5 and I said, 'All right, sir, but we are combining the
6 flight this morning, and --

7 Q (Interrupting) Mr. Williams, did Mr. Winston tell you
8 anything about that --

9 A (Interrupting) About that conversation?

10 Q That conversation with Mr. Kelly, and did he relate what
11 that was about?

12 A Yes, sir, he brought it up and said, 'You gave Mr. Kelly
13 a hard time, and Mr. Kelly --

14 MR. CHALENSKI: (Interrupting) Did you
15 tell Mr. Winston anything about that?

16 THE WITNESS: Yes, sir, I did. I explained
17 the whole story to him, and when I completed telling him
18 the story, he went on to another subject, and I said --

19 BY MR. CHALENSKI:

20 Q (Interrupting) Please tell the jury what you told Mr.
21 Winston about that incident. Now, what happened, and
22 just what you told Mr. Winston?

23 A I told Mr. Winston that Mr. Kelly apologized to me at
24 the counter, and after giving me a hard time, and also
25 later called the office and told the girls, and the

1 girls had found out, and told me that he had apologized
2 for giving me a hard time at the counter, and when I
3 explained that to Mr. Winston, he didn't say anything
4 like I am sorry, or I understand now. He just dropped
5 it right there and went on to another conversation.

6 Q And did he give you any other reasons?

7 A He said he couldn't get me out of the office. He said
8 I didn't want to fly.

9 MR. SHANAHAN: Would you read that back?

10 THE COURT: He couldn't get me out of the
11 office. I did not want to fly.

12 MR. SHANAHAN: Thank you.

13 BY MR. CHALENSKI:

14 Q Did he tell you what he meant by that, Mr. Williams?

15 A Not exactly. The only thing -- the reason he couldn't
16 get me out of the office is because I was assigned to
17 the office, and he didn't really explain what he meant
18 by he couldn't get me out of the office. I told Mr. Bell --

19 Q (Interrupting) Wait, you told Mr. Bell?

20 A I turned my conversation to Mr. Bell because he does the
21 scheduling, and I said that Mr. Bell knows that when he
22 schedules me for something that I fly it. If he says I
23 can't fly, then I am not going to fly it. If he tells
24 me I have to fly something, I fly it. So, I can't say --
25 I wanted to know what he means by he can't me out of the

1 office.

2 Q At that time were you scheduled or was your duty schedule
3 in the office?

4 A My schedule time started approximately six o'clock in
5 the morning, and supposedly ended around three in the
6 afternoon, but I stayed there three days out of the week
7 until six or seven o'clock at night.

8 Q I show you Government's Exhibit number twenty-five in
9 evidence, and have you seen that document before
10 (Offering)?

11 A Yes, sir.

12 Q And I am going to read from paragraph three-e of that
13 Exhibit.

14 'First Officer R.B. Williams has been
15 assigned --', it is dated September 5th, 1975, is that
16 correct?

17 A Right.

18 Q 'First Officer R.B. Williams has been assigned as
19 morning co-ordinating dispatcher. His normal hours
20 are six o'clock until 1500 o'clock. In general he will
21 fly flights 150. This does not relieve the first
22 officer of counter duties.'

23 Was what I just read to you your duties
24 up until the time you that you were fired from
25 September 5th, 1974?

1 A That is what I was doing.

2 Q And did you fly flight 150?

3 A Not all of the time. May I explain?

4 Q Did you tell Mr. Winston anything about flight number
5 150?

6 A No, I didn't.

7 Q Did anybody complain to you prior to the time that you
8 were fired, about your not flying 150?

9 A No.

10 Q Was flight 150 ever missed because you did not fly it?

11 A No, sir.

12 MR. SHANAHAN: What was that question?

13 MR. CHALENSKI: Was flight 150 ever
14 missed because you did not fly it?

15 MR. SHANAHAN: Thank you.

16 BY MR. CHALENSKI:

17 Q Did you arrange for other co-pilots to fly flight 150
18 on occasion?

19 A Yes, sir, I did.

20 Q And did Mr. Winston mention that during the course of
21 his meeting with you?

22 A No.

23 Q That was not referred to at all?

24 A No.

25 Q Did he mention any other reasons why you were being

1 terminated?

2 A Those were the main two reasons that I can remember.

3 Q Let me back up just slightly. You were assigned as
4 morning co-ordinating dispatcher, and what does the
5 morning co-ordinating dispatcher do, and where does he
6 do it?

7 A He comes to the office by six o'clock in the morning,
8 and he checks the teletype machines for reservations.
9 He updates the reservation books, and he waits for a
10 phone call from Elmira, from the pilots at Elmira, or
11 he calls them and co-ordinates what airplanes they are
12 to use on the morning flights, how many people they have
13 and updates their manifests, and also co-ordinates the
14 Binghamton airplane so that they can seat that many
15 passengers if they fly that many to us.

16 Q Is it part of the duties of a co-ordinating dispatcher
17 to fly planes?

18 A Yes, sir, it is. In this case.

19 Q Go ahead?

20 A In other words, it was a new thing. This was something
21 new that developed because we were starting running to
22 Elmira and they needed something there in Elmira in
23 the morning for the new airplanes and the new flights
24 and they chose me because I had been there the longest,
25 and knew what the company was looking for and what kind

1 of co-ordination they wanted.

2 Q Was there any mention of the A.T.R. at that time?

3 A Yes, there was.

4 Q And what was said about the A.T.R., and that is the
5 Airline Transport Rating?

6 A Yes. I don't know why I drew a blank, I didn't mean to.
7 Yes, Mr. Bell had on several occasions said, 'I think
8 it is about time we made you a captain and you have been
9 here long enough. But, of course, you need your A.T.R.
10 which all captain's have and it is a requirement by I.B.M.

11 THE COURT: What did you say the A.T.R.
12 was?

13 THE WITNESS: Airline Transport Rating,
14 or an A.T.P. and that is an Airline Transport Pilot.

15 And so I personally, even though I had
16 never said it to Mr. Bell, until after he finally kept
17 after me for several months, said, 'Well, I really don't
18 want to fly the mail,' and that is where I had flown
19 mail for two or three years, really before I had become
20 full time, and I said, 'I really don't care to fly more
21 mail,' but that is where you receive your training,
22 and I knew I had to do some but I didn't want to do it
23 for another year, flying mail.

24 He said, 'I am sure that we can work
25 something out, and we will take it from there after you

1 receive your A.T.R.' And I said, 'All right, fine.'

2 So I took a leave of absence, and in
3 May of 1974, May or June, I came back the first part of
4 July, and I went to flight safety in Florida, and that is
5 an airline school, not airplane, but flight school, and
6 I attempted to get my A.T.R.

7 I passed the written examination and there
8 is a flying exam also involved in getting your licenses.
9 I failed the flying part. I made a mistake, and we
10 were tired, and I had my family down there, and I knew
11 that they were anxious to get me back. At least I
12 assume that they were anxious to get me back because I
13 spent two months down there already.

14 Q Mr. Williams, you failed the flying part of your A.T.R.
15 but you passed the written part in Florida, and then
16 returned to Binghamton?

17 A Right.

18 Q And could you pass the flight part of your A.T.R. in
19 Binghamton and receive your A.T.R.?

20 A Either in Binghamton or in Rochester.

21 Q And could Mr. Bell have passed you on your A.T.R.
22 rating?

23 A He couldn't have passed me. He could have given me
24 instructions, and I asked him for it on many occasions.

25 Q And instructions that would have provided you to take

1 another test?

2 A Any place that I would be able to take it, or would care
3 to, or Mr. John Herrington. I also asked to rent one
4 of Mr. Winston's airplanes.

5 Q Well, Mr. Williams, you asked Mr. Bell to give you
6 training so that you could take your A.T.R. flight
7 test in Rochester and did Mr. Bell give you that training?

8 MR. SHANAHAN: I object as immaterial. I
9 do not know what this has to do with it.

10 THE COURT: Overruled.

11 BY MR. CHALENSKI:

12 Q Did he give you a reason why he would not give you that
13 training?

14 A No.

15 Q And what time did you start asking him to give you that
16 training?

17 A I would say within a week after I got back from Florida.

18 Q Which was, as you said --

19 A (Interrupting) The middle of July of 1974.

20 Q To your knowledge have any other co-pilots of the
21 Defendant been fired for not having an A.T.R.?

22 A Never to my knowledge. It is not required of a co-pilo

23 MR. CHALENSKI: Thank you, Mr. Williams.

24 MR. RICHARDS: May we have a moment.

25 THE COURT: Surely.

1 MR. SHANAHAN: I did not realize it,
2 but there is very voluminous Grand Jury testimony, Your
3 Honor.

4 THE COURT: It looks like a good weekends
5 reading.

6 We will adjourn now until Monday morning
7 at ten o'clock.

8 Have a nice weekend, and don't talk about
9 the case, and don't let anybody talk about it with you.

10 (Whereupon, the Jury was excused.)

11 THE CLERK: Court stands in recess until
12 ten o'clock on Monday morning.

13 (Whereupon, the proceedings were recessed
14 until the following Monday morning.)
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - -x

UNITED STATES OF AMERICA,	:	
Plaintiff-Appellee,	:	Docket No.
v.	:	76-1436
JERRY WINSTON, BROOME COUNTY	:	CERTIFICATE
AVIATION, INC., COMMUTER AIRLINES	:	<u>OF SERVICE</u>
INC. and THEODORE (TED) BELL,	:	
Defendants-Appellants.	:	

- - - - -x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

MARVIN WEXLER, being sworn, states:

I am an attorney associated with PAUL, WEISS,
RIFKIND, WHARTON & GARRISON, attorneys for appellants herein.
On March 24, 1977 a clerk employed by my firm personally
served two copies of the attached Brief of the Defendants-
Appellants, containing revised record references in accordance
with Rules 30(c) and 31(b) of the Federal Rules of Appellate
Procedure and in accordance with a Stipulation concerning the
submission of a deferred Appendix, and also served two copies
of the deferred Appendix (one copy of the exhibit volume) on
Paul V. French, Esq., United States Attorney for the Northern

District of New York, Office of the United States Attorney
for the Northern District of New York, United States Court
House and Federal Building, 100 South Clinton Street, Syracuse,
New York 13202.

Marvin Wexler

MARVIN WEXLER

Sworn to before me this
24th day of March, 1977.

Antoinette Scaffidi

ANTOINETTE SCAFFIDI
Notary Public, State of New York
No. 41-0779200 Queens County
Certificate filed in New York County
Administration Office March 20, 1975

